CHAPTER - III

RIGHTS OF WORKING WOMEN UNDER INTERNATIONAL LAW: A REVIEW
3. Introduction:

"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". ¹

The advancement of women and the achievement of equality between women and men are a matter of human rights and a condition for social justice and should not be seen in isolation as a women's issue. They are the only way to build a sustainable, just and developed society. Empowerment of women and equality between women and men are pre-requisites for achieving political, social, economic, and cultural security among all people.

Despite the growing awareness among women of their rights, they are still held back by social, economic and cultural constraints. In virtually all cases women continue to bear the double burden of family responsibilities and work, in addition to the difficulties of daily life which many face; this places them in a position of inferiority and marginalisation in their

¹ In 1944, the International Labour Conference meeting in Philadelphia, USA, adopted the Declaration of Philadelphia which, annexed to the constitution, still constitutes the charter of the aims and objectives of the ILO. The Declaration opens with a reaffirmation of the fundamental principles on which the ILO is based, notably that "labour is not a commodity", "freedom of expression and of association are essential to sustained progress" and "poverty any where constitutes a danger to prosperity everywhere." The declaration anticipated and set a pattern for the United Nations Charter and the Universal Declaration of Human Rights.
occupational life and in a continuous state of overwork. Women tend to suffer relatively more than men from current economic pressures, technological innovations, structural adjustment and changes in the labour market, and are assigned more easily than men to precarious employment such as part-time, temporary, occasional or subcontracted jobs. Although women have greater access to employment, a growing number of them are paying for this access through weakened protection and greater insecurity. Equality in treatment and opportunity in employment and occupation is still not within reach.

3.1. Problems Pertaining to Employment and Conditions of Work for the Employed Women:

With the advent of time it has been observed that problems regarding employment opportunity and working conditions available to the women workers have assumed serious dimensions particularly in developing countries which necessitate such countries to pay special attention to the concerned problems to which the women are generally confronted with during their routine working. Therefore, it becomes imperative for such countries specially to ensure availability of proper working conditions to the employed women and to grant them equality of opportunity in economic terms.2 Although requisite statutory measures have been taken by the different countries in this regard but nature and dimensions of these problems differ from

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one country to another. In the same manner the industrially advanced countries have also taken suitable measures for this purpose, which operate as basic guidelines for the developing countries. In Australia a women cell has been established by Department of Labour and National Service with the object of promoting research on the problems of particular concern to women workers. In the same manner, in Argentina a National Directorate for the Security and Protection of Women has been set up in the Ministry of Labour and Social Security for the purpose of rendering advice to the various public agencies on the matters relating to problems of women worker as well as to study the relevant laws relating to employment of women in order to improve their conditions of work and ensure admissibility of other programmes for providing educational and training facilities which might be aimed to raise the status of women workers. Similarly in Canada a Bureau for Employed Women has been set up in the Department of Labour with the main purpose of promoting a wider grasp and understanding of the problems peculiar to the women workers in order to enable them to enjoy a better status as well as to make a more effective contribution to the development of the country. With this basic objective, United Nations organised a seminar on the Status of Women which was held in Tokyo in May 1962 wherein it was agreed to establish by Governmental agencies of member countries women's Bureaux for the purpose of improving the status of women workers. On the basis of experience gained so far it has been established that such administrative arrangements made by member countries have played a useful role in visualising needs and problems of
the workers as well as to enable the member States to take action in a
coordinated manner in order to enable the women workers to overcome
such problems. On these proposed lines various countries have from time
to time, taken requisite measures aiming to provide improved working con-
ditions to their women workers. Belgium has been one of the countries
which constituted Advisory Committee on the matter of Women Power and
Employment Resources which is from time to time required to take up rel-
evant problems of the employed women and to suggest requisite remedies
for improving the status of women workers. In the same manner in Italy a
National Commission on Women’s work which is responsible for investiga-
tion and making recommendations for improving the employment and working conditions admissible to the women workers with special reference to
such matters such as, vocational guidance and training for women, their
placement in employment and the problems of special categories of women
workers, such as domestic servants. Similarly in Netherlands widely repre-
sentative Advisory Committee has been constituted on Women’s and Girl’s
Work vested with the power of advising public authorities on subjects spe-
cially concerned with the employment and working conditions admissible to
them. At the same time Norway has also set up a Special Women’s Con-
sultative Committee having a tripartite representation, namely that of Gov-
ernment, employer and the employees representatives which is generally
called Equal Pay Council to which many matters can be referred such as
payment of wages, conditions of work promoting measures in order to fa-

3. Ibid., at 117.
cilitate effective and efficient participation of women in economic life. In the same manner, number of other developed countries have also constituted similar bodies which have played an effective role for examining and rendering advice on matters of special concern to women workers. All these member countries had constituted such commission on the basis of resolution adopted by the United Nations Commission on the Status of Women at its 17th Session held in March 1963 which could draw the attention of the member States to the relevance of appointing National Commissions on the Status of Women in order to formulate plans and make recommendations for improving the position of women in their respective countries. On these suggested lines many developing countries decided to have systematic arrangements within the frame work of national administration in order to ensure that the problems of women workers could be examined and considered in a coherent manner and the policies and practices for dealing with these problems could be implemented in a coordinated manner. These various consultative and advisory bodies have played a very useful role for providing a valuable channel for focusing attention on problems of special concern to women workers and for suggesting ways and means by which these problems could be solved. All these bodies constituted for the purpose of providing proper working conditions as well as to improve the status of working women have played a significant role in the developed countries. But the position in this regard is not satisfactory in the context of develop-

4. Ibid, at 118
5. Ibid.
ing countries and due to these reasons it is impertive for them to constitute such commissions on the pattern of the developed countries so that it might be possible to formulate basic policies for improving the status of women in developing countries of Asian and African Regions as well as to provide proper working conditions to them in various sectors of employment particularly the unorganised rural and urban occupations of employment as well as the home based establishment wherein the women workers might be usually expected to do work.

Women workers enjoy proper working and living conditions in industrially advanced as well as developed countries and even if there is some discrimination between men and women workers, it is tolerable to a certain extent in the sense that such discriminatory attitude is challenged by the aggrieved parties at the proper forums constituted for that purpose. On the other hand situation is quite different so far as the developing countries are concerned and till today it could not have been feasible to introduce such standards in developing countries even if these standards serve as the basic objectives intended to be achieved in the context of developing countries. At the same time it has been observed that the pattern of employment and the needs of the women workers assumed valuable dimensions depending upon various factors such as socio-economic conditions, development and employment capacity in terms of human resources and adjustment of female folk, particularly when prevailing unemployment, as well as the surplus labour force dominate the scene. The consequent recognition of the urgency of taking all possible steps to raise the economic and social status
of women as well as integrating them more closely and effectively into the whole developing process which is the urgency of the time for the upliftment of the working women in developing countries. In this regard it is being felt in the present context that the United Nations and the specialised agencies primarily concerned with the problems of working women have played a significant role more particularly in the context of developing countries. The United Nations in cooperation with the Member States as well as the specialised agencies and the appropriate Non-Governmental Organisations have tried to work out the feasibility of utilising the existing resources as well as developing new resources which might be aimed at the initiation and implementation of a unified long-term programme for the advancement of women in these countries.  

3.2. United Nations and the Human Rights of Working Women:

"We the peoples of the United Nations Determined to save succeeding generation from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom".  

The United Nations is committed to the principle of equality of men and women, meaning the equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire United Nations system has dedicated itself to ensuring the universal recognition, in law, of equality of rights between men and women, and to exploring ways to give women, in fact, equal opportunities with men to realize their human rights and fundamental freedoms.

Equality of rights for women is a fundamental principle of the United Nations. The preamble to the Charter of the United Nations sets as a basic goal "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women". Article 1 of the Charter goes on to proclaim that one of the purposes is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for all people "without distinction as to race, sex, language or religion".8 Under the Charter, all member states of the United Nations have a legal obligation to strive towards the full realization of human rights for all persons.

The provisions of the Charter regarding equal rights of women have been further redefined and developed in a great number of international

8. Article I(3) of the UN Charter declares that one of the purposes of the United Nation is "to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion".

human rights instruments. The first and most important of these is the 'Universal Declaration of Human Rights'. Historians of the negotiating process have observed that in its early drafts, the Universal Declaration began its first article with "all men and brothers". The exclusion of the female part of humanity in the drafting of the Declaration was effectively opposed by the Commission on the Status of Women. As a result, the Universal Declaration was, in its final form, genuinely universal.\(^9\) The Declaration specifically proclaims the entitlement of everyone to enjoy the extensive human rights and fundamental freedoms which it sets out "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, birth or any other status"\(^{10}\). The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of 1966 clearly state that the rights they set forth should be applicable to all persons without distinction of any kind including sex.\(^{11}\) State parties should undertake to ensure the equal access of men and women to the enjoyment of all rights set forth in each Covenant.\(^{12}\) These two documents recognize inter alia the right to work

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9. Article 1 of the Universal Declaration of Human Rights declares that "All human beings are born free and equal in dignity and rights".

10. Article 2 of the Universal Declaration.


12. Rights such as the right that no one shall be required to perform forced or compulsory labour (Article-8) the right to form and join trade unions (Article-22) have been incorporated in the International Covenant on Civil and Political Rights (ICCPR). On the other hand, the recognition of the right to work, including the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts (Article-6); the right of
and the free choice of employment, to fair wages, to form and join unions, to social security and to adequate standards of living conditions for the people. Other human rights treaties relevant to women have been elaborated by the international community under United Nations auspices. As with the two Covenants, the Convention on the Rights of the Child extends the prohibition on sex-based discrimination to all the rights set forth therein. A number of the articles in this Convention are also of special relevance to the girl-child. While such specific references to women and their rights are lacking in the Convention on the Elimination of All Forms of Racial Discrimination and the Convention Against Torture, the provisions of both these instruments are clearly relevant to the situation of many women and are, of course, applicable equally to both women and men.

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15. Convention against torture and other cruel, In human or degrading treatment or punishment was adopted by the United Nations General Assembly vide Reso. No. 39/46, dtd. 10th December, 1984 and entered into force from 26-6-1987.
Some other treaties which focus specifically or predominately on women have also been adopted by the United Nations.\textsuperscript{16}

In 1979, the General Assembly adopted the Convention on Elimination of Discrimination Against Women. The adoption of the convention was the culmination of decades of international efforts to protect and promote the rights of the world's women.\textsuperscript{17} It resulted from initiatives taken within the United Nations Commission on the Status of Women, a body established in 1947 to consider and make policy recommendations to improve the position of women.

The Convention essentially constitutes the international bill of rights for women. Its preamble recalls that the elimination of discrimination against women and the promotion of equality between women and men are the central principles of the United Nations and constitute binding obligations under its Charter. However, by pointing out that extensive discrimination against women continues to exist, it indicates that the existing international human rights machinery has been insufficient to guarantee the protection of women's human rights. The preamble reiterates that the full and complete


development of a country, the welfare of the world and the cause of peace, require the maximum participation of women on equal terms with men in all fields. Thus, the principle of equality is central to the convention. The convention stresses the importance of equality of opportunity in terms of women's access on equal terms with men to the resources of laws and policies, and supported by institutions and mechanisms for their operation. However, an optional protocol by providing provision for individual Complaint to the committee on the Elimination of Discrimination against Women established under this convention.\textsuperscript{18}

3.3. United Nations Machinery to Monitor and Promote the Human Rights of Women:

The international machinery to monitor and promote the human rights of women has developed along two parallel tracks – reflecting the way in which the international standards themselves have been developed. On one track lies the specialized “women's mechanisms” - specifically the Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women. Along the other track lies the general or mainstream human rights system which is mandated to deal with the entire

\textsuperscript{18} The UN convention on the Elimination of all forms of discrimination against women, which came into force in 1981, bars abuses against women. But it did not allow women to bring grievances directly to the United Nations if they could not get remedies in their own judicial systems. Subsequently, the UN commission on the status of women, which supervises the treaty, initiated an addendum or optional protocol to the treaty that would to submit complaints about alleged violations or abuses. The protocol has been adopted by the General Assembly in 1999 and came into force in December 2000 after it received the ratification of 10 countries as stipulated in Art 16(1) of the protocol.
spectrum of human rights and which therefore considers women and their rights in conjunction with many other related concerns.

The Commission on the Status of Women (CSW) was established by the United Nations Economic and Social Council (ECOSOC) in 1946 as a parallel body to the Commission on Human Rights. CSW’s main task is to prepare reports and to make recommendations to ECOSOC on promoting women’s rights in a broad range of fields as well as to develop recommendations and proposals for action on urgent problems in the field of women’s rights. The Commission has also been given the task of reviewing and appraising the implementation of the Beijing Platform for Action which was adopted by the 1995 Fourth World Conference on Women. The Commission is also able to receive communications from individuals and groups concerning discrimination against women. This procedure does not allow action to be taken on individual complaints but instead aims to discern patterns and emerging trends in order to develop policy recommendations to solve widespread problems. It is through this procedure that the CSW began, some time ago, to address the pervasive problems of violence against women.

The Committee on the Elimination of Discrimination Against Women (CEDAW) was set up under the Women’s Convention to oversee its implementation. In keeping with the other human rights treaty bodies which have been established to monitor the two Covenants, the Child Convention, the Race Discrimination Convention and the Torture Convention, CEDAW is
composed of a number of recognized experts serving in their individual capacity. Monitoring of the Convention by CEDAW is done principally through consideration of reports submitted by States parties. The Committee considers these reports and makes suggestions and recommendations. It can also invite relevant parts of the UN system to submit reports for consideration and can receive information from non-governmental organizations. The Committee is also able to undertake substantive interpretation and analysis of the scope and meaning of the articles of the Convention. These interpretations, as well as making a substantial contribution to human rights law, are very useful for states in compiling their reports and for non-governmental organizations working for change at the national level. The Committee is serviced by the Division for the Advancement of Women (DAW).

The human rights of women are also considered within the “mainstream” human rights system—the focal point of which is the intergovernmental Commission on Human Rights (CHR) and its Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Commission was established by the ECOSOC in 1946 and it is mandated to consider the situation of human rights worldwide. The Commission undertakes its work by re-

19. The optional protocol adopted in 1999 also entitles committee to conduct inquiries into grave or systematic violations of the convention. However, states which ratify the protocol may opt out of the inquiry procedure, but no other reservations to it are allowed. The protocol prescribes the procedure to be followed by the committee in conducting such an inquiry. The committee is empowered to request the state party to take some interim measures as may be necessary to avoid possible irreparable damage to victims of alleged violations before it decided on the merits of a communication made to it.
ceiving information from a wide variety of sources including working groups and special rapporteurs mechanism which it has established to investigate and report on the wide range of country and “thematic issues” such as torture, disappearances and freedom of opinion and expression. Traditionally, much of the work of CHR and its various subordinate bodies has been gender-neutral, a situation which was based, at least in part, on the assumption that women’s human rights were better dealt with elsewhere. In recent years, the CHR has been under pressure to “mainstream” the human rights of women into its work, thereby helping to put an end to the marginalization of women’s human rights in the broader system. In 1994, the Commission appointed a Special Rapporteur on Violence Against Women, Mrs. Radhika Coomaraswamy - the very first and, at present, still the only investigatory procedure with a mandate specifically concerning women. The Special Rapporteur has a mandate to collect and analyse comprehensive data and to recommend measures aimed at eliminating violence against women at the international, regional and national levels. Here it may be noted that the various committees, which have been established to oversee implementation of the two international Covenants, the Child Convention, the Torture Convention and the Race Discrimination Convention, the structure and working methods of these treaty bodies are essentially similar to that of CEDAW as described above-although each has evolved a distinct approach which reflects a difference between their respective founding instruments. The treaty
bodies (with the possible exception of the Child Committee), have traditionally followed the mainstream tendency towards marginalizing or passing over issues relating to women and their rights. This situation is, however, slowly changing and at least several of the treaty bodies have begun to follow the directives of the Commission on Human Rights to integrate a gender perspective into their work.

The Office of the High Commissioner for Human Rights (OHCHR) is the focal point for human rights within the United Nations system. The OHCHR is currently working towards bridging the gap between the "specialized" and the "mainstream" mechanisms as they relate to the human rights of women. The High Commissioner continues to emphasize the importance of integrating women’s rights into a broader understanding of human rights. A number of initiatives aimed at strengthening the capacity of the OHCHR to address the needs and concerns to women have been developed. These include a special project which is being implemented in cooperation with DAW and which is designed to integrate a gender perspective into all aspects of the OHCHR Technical Cooperation Programme.

Protection and promotion of the human rights of women are not restricted to one part of the United Nations system. As noted above, human

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20. On 20th November, 1989 the General Assembly of the United Nations adopted the Convention on the Rights of the Child which came into force in 1990. Article 43 of the convention provides for the establishment of a committee on the rights of the child comprising of 10 experts. Under Article 44 of the convention, state parties have undertaken to submit to the committee, through the secretary general of the United Nations reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of more rights.
rights and non-discrimination are guiding principles for the Organization as a whole. In this context it is evident that responsibility for the human rights of women devolves to all levels throughout the United Nations system.

Many agencies and programmes of the United Nations are closely involved in issues relating to the human rights of women. The Division for the Advancement of Women (DAW) and the United Nations Development Fund for Women (UNIFEM) are pivotal to the status of women in the United Nations system.

The focus which the specialized agencies and other parts of the United Nations take to the issue of women and their rights depends, of course, on their specific mandates and fields of concern. The United Nations High Commissioner for Refugees21 for example, is directly involved in protecting the rights of women and girl-child refugees who together comprise approximately 80 per cent of the total world refugee population. In recognition of the gender-based nature of much refugee persecution and of the special vulnerabilities of female refugees, UNHCR has developed gender-specific operational guidelines and programmes. The International Labour Office, has played a crucial role, for many years, in the elaboration of labour standards which seek to protect woman workers from exploitation and ensure equal rights and conditions for both women and men. The right of all women to the best attainable standard of health—as well as their right of access to

21. In 1950, the General Assembly adopted the statute of, and established, the office of the united nations high commissioner for refugees.
adequate health services-has been a primary consideration of the World Health Organization. Another Specialized Agency, the United Nations Children’s Fund (UNICEF) has been at the forefront of the struggle for the rights of the child including the girl child. UNICEF has recognized, in both its policies and programmes, that advancement of children’s rights is inextricably linked to the rights and status of women.

3.4. United Nations World Conferences on women:

Any overview of the United Nations and the human rights of women, no matter how brief, would be incomplete without some mention of the role which UN-organized world conferences and summits have played over the years. By bringing together senior decision-makers to hammer out at least a minimum consensus on key issues, these events have become an important tool of international diplomacy. Four UN Conferences on Women have thus far been organized: in 1975 (Mexico); 1980 (Copenhagen); 1985 (Nairobi) and 1995 (Beijing). Other world conferences which have placed special importance on gender equality and the human rights of women include the 1993 World Conference on Human Rights (Vienna) and the 1994 World Conference on Population and Development (Cairo).

In the long list of World Conferences, two recent Conferences stand out as important milestones in the struggle for women’s human rights. Although the United Nations human rights system has made noteworthy progress regarding the implementation of women’s rights, the 1993 World Conference on Human Rights highlighted the need for greater accountability for the
many violations that still occur. For the first time, the international community openly acknowledged that the body of international laws and mechanisms established to promote and protect human rights must make a greater effort to defend the concerns of over half the world’s population. In the final document of the Conference, States formally recognized the human rights of women to be “an indivisible and integral part of human rights”. They further demanded that “the equal status of women, and the human rights of women be integrated into the mainstream of United Nations system-wide activity” and “form an integral part of the United Nations human rights activities.” The Vienna Conference also directly addressed the key issue of violence against women. The final report of the Fourth World Conference on Women “as much more expensive and considerably more ambitious than any of its predecessors- dealing exhaustively with the full range of women’s issues within a right-based framework and reaffirming the commitment of Vienna to greater integration or women’s human rights throughout the United Nations system.

22. In June, 1993, at the United Nations World Conference on Human Rights in Vienna a petition signed by over half a million women from 124 countries and handed over the chairman of the conference, called upon the gathering to comprehensively address women’s human rights at every level of its proceedings and to recognise gender based violence as a violation of human rights. The programme of action adopted stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassments, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional customary practices, cultural prejudices and religious extremism.

23. The Fourth World Conference of Women was held at Beijing from 4th to 15th September, 1995. The conference carried forward the themes of Equality, Development and Peace which highlighted the first UN conference on women held in Mexico City in 1975.
While great achievements have been made for the human rights of women since the adoption of the Universal Declaration, it is clear that much remains to be done. The traditional marginalization of women's human rights is an accurate reflection of the subordinate position which women continue to occupy in many parts of the world. International human rights laws and the mechanisms, which have been established to enforce human rights, the strengthening of this system – and of its regional, national and grassroots counterparts – is a priority and a responsibility of the United Nations, individual States and all sectors of civil society. The 50th Anniversary of the Universal Declaration provides a very good opportunity to focus on the development of concrete initiatives to further women's rights, namely:

- Campaigning for the effective integration of gender into the international human rights system;

- Campaigning for the unconditional, universal ratification of the Convention on the Elimination of All Forms of Discrimination against Women; for the removal of substantive reservations; and for the strengthening of its implementation machinery;

- Developing innovative activities at all levels to increase women's awareness of their human rights; of the mechanisms which are available to protect and enforce those rights and of the various methods of advocacy which can enable women to gain greater access to economic and political opportunities;
Advocating human development programmes which explicitly recognize and advance universal principles of equality and non-discrimination and which embrace education, improved reproductive health and more credit for women.

Strengthening of the partnership is of utmost importance between national and international women's and human rights NGOs, as well as, between all such NGOs and the United Nations system. This partnership should ensure that the human rights of women remain firmly fixed on the national and international agenda and that accurate information about the state of the world's women is collected, analysed and disseminated.

In the occasion of the 50th Anniversary of the Universal Declaration in 1998 the Office of the High Commissioner for Human Rights contacted a number of institutions, agencies and women's organizations from all regions of the world with a request that they provide information on their activities for the promotion and protection of women's human rights in the framework of the 50th Anniversary of the Universal Declaration. The fifty seven years since the adoption of the Universal Declaration of Human Rights by the General Assembly have witnessed the growth of respect for the idea of a world order governed by human rights.

Human rights have long been central to the work of the Division for the Advancement of Women. Originally a Section of the Human Rights Division and then the Branch for the Promotion of Equality of Men and Women, the Division's precursors provided the substantive servicing for the
Commission on the Status of Women as it elaborated key treaties concerned with women's human rights. The Commission's work culminated in the adoption by the General Assembly in 1979 of the Convention on the Elimination of All Forms of Discrimination against Women and since 1981, when the Convention entered into force, much of the Division's energies have been directed at supporting the work of the Committee on the Elimination of Discrimination against Women, the treaty body established under the Convention. The Division's role in the promotion of human rights was strengthened at the 1993 Vienna World Conference on Human Rights where the international community sought to reverse the pattern of neglect of the human rights of women and thereby reclaim the vision of these rights. It recognized the important role the Division plays in supporting the committee on the Elimination of Discrimination against Women as it performs its important work in monitoring the implementation of the Convention.

The conclusions of the Vienna Conference were reiterated, refined and expanded by the Fourth World Conference on Women. In its final document, the Beijing Declaration and Platform for Action, the Conference identified the human rights of women as one of the critical areas of concern requiring action by the international community and the United Nations system and outlined strategic objectives and actions required by Governments, the United Nations and civil society to ensure that women are guaranteed their fundamental human rights.²⁴

²⁴. The Beijing conference adopted platform for action, concentrating on key issues identified as obstacles to the advancement of women throughout the world. It also determined priority actions to be taken by the international community including the United Nations, between 1996 and 2001 for the advancement of women.
1998 was a critical year for the Division for the Advancement of Women, as it both marked the fiftieth anniversary of the Universal Declaration of Human Rights and the five years since the World Conference on Human Rights. It was an opportunity to assess how far the vision enshrined in the Declaration is truly universal and available to women and men on a basis of equality.

3.5. The Role of the International Labour Organisation (ILO) in the Promotion of Women Workers Rights:

The International Labour Organisation was established in 1919, after the First World War, following the treaty of Versailles. Created to develop international labour standards and to ensure their application, the ILO devoted the bulk of its energies to this major task during its first forty years.\(^\text{25}\) During its twenty year period from 1919 to 1939, 67 conventions and 66 recommendations were adopted. The first convention in 1919 dealt with hours of work, the famous eight-hour day and forty-eight hour week. Employment has been the subject of several texts.

In 1944, delegates to the International Labour Conference\(^\text{26}\) adopted the Declaration of Philadelphia which, annexed to the constitution, still consti-

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\(^{25}\) The ILO has been one of the most successful multilateral agencies in fulfilling its mandate. There is one lesson from eight decades of ILO history, it is that renewal, change and adoption have been vital to its success. Born at a fleeting moment of hope, it has lived through the Great Depression and survived a global war. After the second world war a new era dawned for the ILO. Its tripartite structure makes the ILO unique among world organizations in that employers' and workers' organizations have an equal voice with governments in shaping its policies and programmes.

\(^{26}\) The International Labour Conference in every two years adopts the ILO's biennial work programme and budget, which is financed by member states.
tutes the charter of the aims and objectives of the ILO. The declaration opens with a re-affirmation of the fundamental principles on which the ILO is based, notably that "labour is not a commodity", "poverty anywhere constitutes a danger to prosperity everywhere". "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". The International Labour Conference meets in June of each year, in Geneva. The Conference provides an international forum for discussion of world labour, social problems and international labour standards and sets the broad policies of the organization.

In 1998, the International Labour Conference adopted a solemn ILO Declaration on Fundamental Principles and Rights at Work, reaffirming the commitment of the international community to the principles concerning the rights of workers and employers to freedom of association and the effective recognition of the right to collective bargaining, and to work towards the elimination of all forms of forced or compulsory labour and the elimination of discrimination in respect of employment and occupation. The declaration underlines that all member countries have an obligation to respect the fundamental principles involved, whether or not they have ratified the relevant conventions.
THE STRUCTURE OF THE INTERNATIONAL LABOUR ORGANIZATION

THE LEGISLATIVE BODY: THE INTERNATIONAL LABOUR CONFERENCE

4 Representatives for each Member State

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THE IMPLEMENTING BODY:
THE INTERNATIONAL LABOUR OFFICE

Headquarters in Geneva

3.5.1. ILO Principles on Equality for Women:

Equality of opportunity and treatment between women and men continues to be the guiding principle of ILO policy on the advancement of women and for the improvement of the status of women workers in member States. It is approached in three ways:
- Firstly, as a matter of human rights and essential condition for achieving effective democracy, the fight against discrimination on the basis of sex is considered as a fundamental issue in protecting human rights. In this regard, emphasis is given to women’s legal rights and to the elimination of all kinds of de-facto and de-jure discrimination on the basis of sex in employment and occupation.

- Secondly, as a matter of social justice and poverty alleviation, by improving women’s access to employment and training and their conditions of work and social protection. Particular attention is given to poor women, to unemployed women, to women in the urban informal sector and in the rural sector, to women heads of households, to migrant women, and to women in a vulnerable position in the labour market.

- Thirdly, as a matter of social and economic development, by promoting the participation of women in decision-making and in shaping development and labour policies and practices that adequately respond to equality objectives. The empowerment of women and their active involvement in public life is essential for bringing their creativeness and innovative perspectives into the design and implementation of development policies and strategies, and for them to obtain an equal share of the benefits of development.
3.5.2. Priority areas for action:

The broad ILO strategy to ensure that gender and equality concerns are fully integrated in all the organization’s programmes and activities has identified the following priority areas:

- providing assistance to member States in the formulation and adoption of comprehensive national strategies for the promotion of full equality for women. This includes: the design of national policies and mechanisms and instruments for its implementation; the adoption, revision and enforcement of appropriate legislation, based on international labour standards; the adoption of practical measures, including positive action; and, the promotion of social dialogue and tripartite involvement on equality issues;

- providing assistance to improve the situation of the most disadvantaged groups of women workers, in particular disabled women, rural women, female heads of households, women in the informal sector, migrant women, refugee women and indigenous and tribal women;

- providing assistance to develop the institutional capacity of member States for the promotion of equality. This includes: the strengthening of national machineries; contributing to gender sensitization within governments and employers’ and workers’ organizations; and promoting national, regional and international links and exchanges of experiences to create supporting networks;
• providing assistance to enhance the participation of women in decision-making at all levels, in particular in governments and employers' and workers' organizations. This includes: training in leadership management and entrepreneurship, support to women's organizations and networks; information dissemination for awareness raising; and other supportive measures.

The strategic approach of the ILO to assist its member States in the advancement towards full equality of opportunity and treatment between women and men is to incorporate equality concerns in all programme objectives and activities.

The overall strategy aims at ensuring that women's issues are integrated across the board within a coherent and comprehensive framework of action.

3.5.3. ILO's institutional arrangements for the promotion of equality:

The current institutional arrangements for the promotion of equality of opportunity and treatment between women and men were drawn up and initiated in 1989. In accordance with the ILO policies and strategies on the subject, the principal aim of the new organizational arrangements is to facilitate and enhance planning and coordination of ILO activities on women workers throughout the Office, and to ensure a more effective and rapid integration of equality concerns in all ILO activities. The broad range of activities concerning women workers requires a comprehensive framework of action, a coherent overall programme and a network of expertise, cutting
across technical departments and regional offices. Therefore, the ILO's machinery to deal with women workers' questions is a decentralized one, involving many different units, under the overall coordination of the Special Adviser on Women Workers' Questions.

The Special Adviser on Women Workers' Questions is responsible for the promotion and coordination of ILO policies, strategies, programmes and activities concerning equality for women in employment throughout the Office, both at headquarters and in the field; for relations with ILO constituents and representation of the Office on women workers' questions; and for liaison on these matters with other international organizations, particularly in the UN system. The main functions of the Special Adviser are to advise at the policy level on ILO priorities and objectives concerning women workers, and to guide the implementation of a coherent and strategic overall ILO programme for the advancement of the status of women in employment. The post of Special Adviser is attached to the Office of the Deputy Director-General responsible for Development and Technical Cooperation.

Technical departments play a crucial role in defining issues, proposing programmes and implementing and assessing the substantive activities concerning women workers. Their full participation and commitment to the overall strategy are essential to the ILO's programme for equality of opportunity and treatment. In order to render their programmes more sensitive to gender issues and/or to strengthen the equality dimension in their activities, departments and branches have assigned responsibility to specific officials
for promoting and monitoring issues concerning women workers in their technical fields. The role of these focal points for women workers' questions in technical departments and branches goes beyond the implementation of women-specific activities and consists mainly of ensuring that equality concerns are duly taken into consideration in programme objectives and activities in their respective technical area.

The work of the following Departments of the ILO have a special relevance for women workers as their activities cut across all other Departments.

The Equality and Human Rights Coordination Branch (EGALITE) of the International Labour Standards Department promotes the respect of international labour standards and human rights concerning equality, through supervision of the application of Conventions and Recommendations on equality, and through educational and promotional and technical assistance activities for the elimination of discrimination in the world of work.

The Bureau of Programming and Management (PROGRAM) is responsible for ensuring that issues concerning equality of opportunity and treatment between men and women are taken into account throughout the programming cycle (design, monitoring and evaluation).

3.5.4. Senior specialists on women and gender questions:

The field structure also plays a key role in the ILO's programme concerning women workers. These specialists have a wide range of responsi-
bilities in promoting, coordinating and monitoring activities as well as liaising with other organizations and representing the Office. In close collaboration with headquarters they assist in identifying areas and means for priority action, monitor and report on developments, and promote gender issues within the regions, notably by mobilizing the ILO field structure to take increasing account of women workers' concerns in their programme and activities. When necessary, they promote and monitor women-specific activities. These specialists are members of the multidisciplinary teams.

An integral part of the ILO institutional arrangement for the promotion of equality is the Women in Development (WID) Unit at the ILO International Training Centre in Turin. The ILO Turin Centre's programmes aim to ensure the integration of women as agents in all aspects of development. The rising proportion of women attending Turin Centre courses indicates the growing recognition of women's responsibilities and access to the development process. At the same time a specific Women in Development (WID) programme has been created with vertical and horizontal functions. It collaborates with all the regional and technical programmes in order to mainstream WID issues. The International Training Centre of the ILO runs specific courses aimed at promoting equal opportunities in employment.

3.5.5. Activities at the regional level:

At the regional level, a number of activities focus on the consequences of economic restructuring which is seen as one of the main causes of problems faced by women in the labour market. Advisory services, technical
cooperation activities, meetings and training courses in developing countries have included information, discussions and policy recommendations at the national and regional levels to improve the situation of women in stabilization and adjustment programmes. In all regions activities have focused on:

- promoting greater awareness among the tripartite constituents of the special problems faced by women as a consequence of restructuring;

- addressing these problems as part of a general effort to assist countries promote growth with minimal social costs and design social safety net policies; and

- Specific technical cooperation measures to assist the most vulnerable groups of women workers.

ILO conventions and Recommendations cover practically all aspects of work: employment, conditions of work, social security, industrial relations, safety and health, equal opportunity, non-discrimination and other human, labour and social rights.

Although most of the instruments are general in nature and apply to all workers, some lay down standards to meet the specific concerns of groups of workers such as women. Others are concerned with the protection of fundamental human rights such as the elimination of discrimination and the promotion of equality of opportunity in employment, and still others deal with particular sectors of work such as plantations.
Standards to promote equality and prohibit discrimination are considered to be basic human rights, and as such are to be promoted on a priority basis. Standards, which assist in the establishment of institutional structures such as employment policy, social security and labour administration may be called framework standards for development. Standards containing more specific requirements such as health and safety regulations may be called technical standards. Each type plays an important role in the development of a society based on principles of social justice.

As stated above, a fundamental objective of the ILO is the promotion and protection of basic human rights. The following standards which prohibit discrimination on grounds of sex and promote equality and protect rights of freedom of association are considered among the priority instruments.

3.6. Important ILO Conventions on Working Women:


Equal pay has been regarded as an important issue right from the inception of the ILO. During the First and Second World Wars, women in many countries were drawn into the employment market in large numbers to meet urgent demands for labour; they replaced men in some occupations and were employed in new occupations, particularly for war industries. At that time, the problem of equal pay was primarily considered one of protecting men's wages and preventing them being levelled down by the em-
ployment of women at lower rates. From the 1950s onwards, in most countries, increasing numbers of women entered the labour market, whether the economy was predominantly agricultural or industrial.

At the time of the adoption of the Convention, it was recognized that the differential between men’s and women’s wage rates could not be justified in terms of the respective efficiency and capability of the two groups, but rather arose from traditional attitudes towards women and work. It was also recognized that the application of the principle of equal remuneration could not be applied under general conditions of inequality. Accordingly, the Convention underlined the need to take additional measures to promote equality between women and men in the workplace. Equal pay was seen not only as a measure to promote social justice, but also as a means to foster labour mobility and the efficient utilization of the labour force.

States which have ratified the Convention agree to promote the principle of equal pay for women and men workers for work of equal value. They must ensure its application to all workers in a manner consistent with the national methods used for determining rates of pay.

The Convention applies to basic wages or salaries and to any other additional emoluments (supplements, bonuses, allowances, etc.) which the employer pays directly or indirectly to the worker in cash or in kind as a result of her or his work. The Convention defines equal pay for work of equal value as a rate of pay fixed without discrimination based on sex.
The Convention requires governments to ensure that the principle is applied to all employees under its control and to promote the application of the principle in all other sectors.

This principle may be applied by means of national laws or regulations, legal machinery for wage-fixing, collective agreements or a combination of these methods. One of the ways suggested to help facilitate the application of the Convention is the objective appraisal of jobs on the basis of the work to be done. Governments are required to cooperate with employers’ and workers’ organizations to help put the provisions into practice.

3.6.2. Recommendation No. 90: Equal Remuneration, 1951:

Aim

To supplement Convention No. 100 in helping to achieve equal remuneration for women and men for work of equal value.

Summary

The Recommendation refers to the principle laid down in Convention No. 100 that women and men workers are to be paid equally for work of equal value. It says that procedures should be established to enable this principle to be put into practice gradually.

Legislation should be enacted to ensure that the principle is put into practice where appropriate, and the governments concerned should make sure that employers and workers are fully informed of the legal requirements.
Where it is not thought possible to implement the principle immediately, efforts should be made to apply the principle progressively: for example, by reducing the differentials between rates of pay, or by providing equal increments where applicable.

Each State should try to establish methods for the objective appraisal of the work to be done, either by job analysis or other procedures, in order to establish job classifications unrelated to the sex of the person who will perform the job.

Also recommended are measures to increase the efficiency of women workers, such as providing equal or equivalent facilities for both sexes for vocational guidance, training and placement, encouraging women to use such facilities, providing services for workers with family responsibilities, and promoting equal access to jobs. Efforts are to be made to promote public understanding of the reasons why the principle of equal remuneration should be implemented and any investigations needed to help promote this principle should be undertaken.27

27. In 1993 the Committee of Experts noted with interest in its report that the application of Convention No. 100 had been furthered in Austria. In response to the initiatives of the national Equal Treatment Committee, the remaining discriminatory clauses contained in a few collective agreements in food and allied industries had been removed, by aligning the rights of women with those of men as regards travel allowances, family allowances and widows' pensions.
3.6.3. Convention No. 111: *Discrimination (Employment and Occupation)*, 1958

**Background**

Equality of rights for all human beings has been fundamental to the activities of the ILO since its creation in 1919 and the inspiration for many of the decisions of the International Labour Conference. After the second World War, there was a greater awareness of human rights concerns. The emergence of new countries and widespread migration meant that many countries had to face difficult problems of inter-group relations. In the context of the labour market, the need to prohibit discrimination on specifically designated grounds was seen as a necessary step for a State in order to promote a socially just and productive society. It was considered timely to adopt a Convention to assist States develop non-discriminatory national policies and legislation designed to promote equality in employment and occupation. The Convention was adopted in 1958.

**Aim**

To promote equality of opportunity and treatment in respect of employment and occupation without discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. Each ratifying State must adhere to the basic goal of promoting equality of opportunity and treatment by means of a national policy which aims to end to all forms of discrimination in employment and occupation.
Discrimination is defined as any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin (or any other ground determined by the State) which nullifies or impairs equality of opportunity or treatment in employment or occupation. The definition includes direct and indirect discrimination. Any distinction, exclusion or preference based on the inherent requirements of a particular job is not considered to be discrimination under the Convention. The Convention covers access to vocational training, access to employment and particular occupations, and terms and conditions of employment.

A ratifying State agrees to do away with any laws and change any administrative instructions or practices which are not in line with this policy, and to enact laws and promote educational programmes in cooperation with employers’ and workers’ organizations. The policy is to be pursued under the direct control of a national authority and its vocational guidance and training, and placement services.

Summary

In the formulation of a national policy to prevent discrimination in employment and occupation, States are to be guided by the following principles:

- The promotion of equality of opportunity and treatment in employment is a matter of public concern;
All persons should, without discrimination, should enjoy equality of opportunity and treatment in respect of access to vocational training and guidance and placement services, access to training and employment, equal pay for work of equal value, security of employment and equal conditions of work.

The principles of non-discrimination in employment should be applied under the direct control of a national authority, and states should also promote these principles in respect of all other employment and training.\textsuperscript{28}

Agencies composed of representatives of employers' and workers' organizations should be established with the aim of promoting the application of the policy in all fields of public and private employment and with a view to examining and investigating complaints of non-observance of the policy.

3.6.4. Convention No.156: Workers with Family Responsibilities, 1981:

Background

Since 1919 the ILO has adopted several instruments to protect women workers. The first standards were designed to protect women against exploitation in their work and to safeguard their health, particularly before and after child-birth. Efforts were later directed at improving the opportunities of women at work to ensure equality of opportunity and treatment in

\textsuperscript{28} In Switzerland, as a result of ratification of Convention No.111 in 1961, regulations allowing termination of women's employment on their marriage were repealed.
employment: equal pay for work of equal value is such a measure. It was recognized that these efforts would have little impact if large numbers of women had to give up their jobs or chance of promotion because of family responsibilities. In 1965, therefore, the Employment (Women with Family Responsibilities) Recommendation (No. 123) was adopted, followed in 1975 by a resolution concerning women workers, which called for measures to promote genuine equality for women workers through the provision of facilities to enable working parents to meet their family responsibilities.

Data based on national surveys in the 1970s showed that women accounted for more than one-third of the world's economically active population and that 46 out of every 100 women of working age (15 to 64 years) were part of the labour force. An increase in the number and proportion of married women in the workforce was recorded. In a number of countries, married women made up over half the female labour force. Particularly in industrialized countries, many of these married women were mothers with very small children and large families.

By the end of the 1970s, the belief that women had greater responsibilities towards their families than did men was no longer in line with contemporary views on the role of women in society. Modern thinking held that women and men should have equal responsibilities towards their children and other family obligations and consequently, that all services and arrangements developed in this respect should be available equally to women and men. Convention No. 156 was adopted in 1981.
Summary

The Convention applies to women and men workers with responsibilities for their dependent children or other members of their immediate family where such responsibilities restrict their participation in economic activity.

It requires States to make it an aim of national policy to enable workers with such responsibilities to engage in employment without being subject to discrimination, and, as far as possible, without conflict between their employment and family responsibilities.

All measures compatible with national conditions and possibilities should be taken to enable the workers in question to exercise their right to free choice of employment and to take account of their needs in terms and conditions of employment and in social security.

The Convention then provides for corresponding measures to be taken in community planning and in the development of community services such as child care and family services and facilities.29

In addition, it provides for information and education to engender a broader understanding of the principle of equality of opportunity and treat-

29. To further implementation of Convention No.156, the Ministry of Family Welfare and the Children's Foundation in Venezuela instituted a national childcare programme. The central objective of the programme, which is need-based and community-oriented, is to attend to the health and welfare of the child, while at the same time facilitating the mother's entry into the labour market.
ment for women and men workers and of the problems of workers with family responsibilities. It also lays the basis for specific measures in the field of vocational guidance and training.

The Convention states that family responsibilities alone are not a valid reason for a person to lose her or his job.

3.6.5. Convention No. 87: Freedom of Association and Protection of the Right to Organize, 1948

Aims

The freely exercised rights of workers and employers, without distinction, to organize for the purpose of furthering and defending their interests.

Summary

Workers and employers must have the right to establish and join organizations of their own choosing with a view to defending and furthering their respective interests.

Such organizations must have the right to draw up their own constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programmes. Public authorities shall refrain from any interference which would restrict this right or impede its lawful exercise.

In exercising the rights provided for in the Convention, employers and workers and their respective organizations shall respect the law of the land.
The law of the land and the way in which it is applied, however, may not be such as to impair the guarantees provided in the Convention.

3.6.6. Convention No. 98: *Right to Organize and Collective Bargaining*, 1949:

**Aim**

Protection of workers who are exercising the right to organize; non-interference between workers' and employers' organizations; promotion of voluntary collective bargaining.

**Summary**

Workers should be protected from anti-union discrimination. In particular, they should be protected against refusal to employ them because of union membership and against dismissal or any other prejudice based on union membership or participation in trade union activities.

Workers' and employers' organizations shall enjoy protection against acts of interference by each other. This protection is extended, in particular, against acts designed to promote the domination, financing or control of the workers' organizations by employers or employers' organizations.

Measures appropriate to national conditions should be taken where necessary to encourage and promote the development and utilization of voluntary collective bargaining as a means of regulating terms and conditions of employment.
3.6.7. Convention No. 141: Rural Workers' Organizations, 1975:

Background

Various other ILO instruments have mentioned the need to set up and develop organizations for rural workers and to improve their conditions of life: in particular, the Cooperatives (Developing Countries) Recommendation, 1966 (No. 127), which applies to all categories of cooperatives, and the Tenants and Share-croppers Recommendation, 1968 (No. 132). The Labour Administration Convention, 1978 (No. 150), also refers to the conditions of work and life of various categories of rural workers (Article 7).

The Rural Workers' Organizations Convention (No. 141) and Recommendation (No. 149) were adopted in 1975. Convention No. 141 provides that ratifying States should aim to ensure that rural workers' organizations play a role in economic and social development, and protects the right of all persons working in agriculture, handicrafts or related occupations in a rural area, to join organizations of their own choosing.

Aim

Freedom of association for rural workers; encouragement of their participation in economic and social development.

30. In the Bankura District of West Bengal, India, the concepts of the convention have been used to organize and mobilize poor rural women to undertake the economic development of wasteland.
Summary

All persons working in agriculture (wage earners or self-employed, including farmers, tenants and small owner-occupiers) have the right to establish and join organizations of their own choosing, which shall be independent and voluntary in character and remain free from all interference, coercion or repression (the guarantees of the Convention also apply to organizations not restricted to, but representative of, rural workers). Regarding the exercise of this right while respecting the acquisition of legal personality by the organizations concerned, the Convention reproduces the relevant provisions of Convention No. 87. National policy should encourage rural workers' organizations as an effective means of ensuring those workers' participation in economic and social development and in the benefits which accrue, without discrimination, especially on grounds of sex. States should promote the widest possible understanding of this policy.

3.6.8. Convention No. 122: Employment Policy, 1964:

Aim

To promote full, productive and freely chosen employment.

Summary

The Convention requires, as a major goal, the declaration and pursuit of an active policy designed to promote full, productive and freely-chosen employment, with a view to stimulating economic growth and development,
raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment.

The policy shall aim at ensuring that there is work for all who are available for and seeking it, that such work is as productive as possible and that there is freedom of choice of employment. All workers should have the fullest possible opportunity to qualify for and use their skills and endowments in jobs for which they are suited. Discrimination, including on grounds of sex, may not be permitted.

Employment policy should take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives and should be pursued by methods that are appropriate to national conditions and practices. The measures to be adopted for attaining the specified objectives should be decided and kept under review within the framework of a coordinated economic and social policy.

Finally, the Convention provides for consultation with representatives of the persons affected by the measures to be taken and in particular representatives of employers and workers.

3.6.9. Convention No. 158: Termination of Employment, 1982:

Background

Since 1963 the law and practice on termination of employment have undergone substantial changes in a number of countries. In the 1970s it
became clear that a new instrument was required to take account of these national developments. The concern to provide workers with some protection against termination of employment by an employer forms the basis of this Convention. It was realized that the consequences of the equality of rights to terminate employment, enjoyed by both the worker and the employer, were profoundly different for both parties. The exercise by the worker of her or his right to terminate the contract was at most an inconvenience for the employer, who generally could readily replace a worker from a large pool of unemployed. Yet, the consequences for the worker of the exercise by the employer of the right to terminate the contract were of an entirely different order, since the loss of employment could reduce the worker and her or his family to a state of poverty, particularly at a time of widespread unemployment. A number of changes in national legislation provided the worker with greater protection; but the most fundamental change did not take place until the end of the 1970s, with the adoption of legislation requiring justification for the termination of the contract of employment by the employer. This justification principle became the centerpiece of the law governing termination of employment in many countries and forms the basis of Convention No. 158, which was adopted in 1982.

**Aim**

Protection against termination of employment at the initiative of the employer without valid reason.
Summary

The Convention says that the employment of a worker shall not be terminated unless there is a valid reason connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking or service. It then lists those reasons, which may not be valid grounds for termination. These include: union membership or participation in union activities at appropriate hours; seeking office or acting as a workers’ representative; filing a complaint or participation in proceedings against an employer for violations of laws or regulations; race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; absence from work during maternity leave; or temporary absence from work through illness or injury as defined at the national level. The Termination of Employment Recommendation, 1982 (No. 166), adds age (subject to rules concerning retirement), compulsory military service and other civic obligations, as non-valid reasons for termination.

The Convention also deals with the procedures to be followed for the termination of employment and for appeal against termination.\(^31\)

It provides for a reasonable period of notice to be given or compensation, unless the worker is guilty of serious misconduct, and for a severance allowance and/or other forms of income protection (unemployment insurance or assistance and other social security benefits).

\(^31\) This Convention makes it clear that the employment of a woman or man should not be terminated on grounds of marital status, family responsibilities or pregnancy. A woman’s employment status should not change because she has married.
In the case of an unjustified termination of employment where reinstatement is not possible, compensation should be paid.

3.6.10. Maternity Protection:

Convention No.3: Maternity Protection, 1919

Convention No. 103: Maternity Protection (Revised), 1952

Background

Maternity protection measures have always been a major concern of the ILO. At its first session in 1919, the International Labour Conference adopted the Maternity Protection Convention (No.3). This concern was reaffirmed by the Declaration of Philadelphia adopted in 1944. Convention No.3 was revised in 1952 by the Maternity Protection (Revised) Convention (No.103). The new instrument enhances the standards laid down in 1919.

Common aim of the two Conventions

Twelve weeks maternity leaves with entitlement to cash benefits and medical care.

Scope

- Convention No.3 applies to women working in industry and commerce.

- Convention No. 103 applies to women employed in industrial undertakings and in non-industrial and agricultural occupations, includ-
ing women wage-earners working at home or in domestic work in private households. The sole exception provided for is family undertakings, but exemptions for certain categories of non-industrial occupations, occupations carried on in agricultural undertakings other than plantations, domestic work for wages in private households, and women wage-earners working at home or in undertakings engaged in the transport of passengers or goods by sea may be possible.

**Duration of leave**

- Convention No.3 envisages six weeks before the presumed date of confinement and six weeks after confinement.

- Convention No. 103 provides for a minimum of 12 weeks' maternity leave, six of which have to be taken after confinement. This period of leave shall be extended by any period elapsing between the presumed date of confinement and the actual date of confinement, as well as in the case of illness arising out of pregnancy or confinement.

**Cash benefits and care**

- Convention No.3: While absent from work on maternity leave, a woman shall be paid benefits to cover the full and healthy maintenance of herself and the child, either from public funds or from an
insurance scheme. In addition, she should be entitled to free attendance by a doctor or certified midwife.

- **Convention No. 103**: While absent from work on maternity leave, a woman shall be entitled to cash benefits to cover the full and healthy maintenance of herself and the child in accordance with a suitable standard of living, and to medical benefits including pre-natal, confinement and post-natal care as well as hospitalisation care where necessary. Freedom of choice of doctor and freedom of choice between a public and private hospital should be respected.

It also states that these benefits shall be provided through either compulsory social insurance or public funds. In the former case, if cash benefits are based on previous earnings they should be at a rate of not less than two-thirds of a woman's previous earnings. In no case should the employer be individually liable for the cost of benefits.

**Nursing**

- According to Convention No.3, a woman shall be allowed half an hour twice during her working day to nurse her child.

- According to Convention No. 103, if a woman is nursing her child, she shall be entitled to interrupt her work for this purpose and these interruptions should be counted as working hours and remunerated accordingly.
Prohibition of dismissal

- Conventions Nos. 3 and 103 prohibit giving notice of dismissal to a woman during her absence from work on maternity leave or giving her notice of dismissal at such a time that the notice would expire during such absence.

Recommendation No. 95: Maternity Protection, 1952:

Aim

To supplement Convention No. 103 in helping to ensure that women receive maternity leave with entitlement to cash benefits and medical care.

Summary

It is recommended that, where a woman’s health makes it necessary and where this is practicable, the period of time off work for childbirth should be extended to 14 weeks. When required for medical reasons, this period may be extended still further.

Where practicable, cash benefits should be at a higher level than the minimum given in Convention No. 103, to equal if possible 100 per cent of a woman’s previous relevant earnings.

Details are given as to the kind of medical benefits which should be provided in order to maintain, restore or improve the health of a woman and her ability to work and to meet her personal needs. Women should be
encouraged to make use of available health services. Other benefits in cash or kind, such as supply of milk or nursing allowances, are also contemplated.

Nursing breaks should, where possible, be extended to a total of at least one and a half hours during the working day, with adjustments permitted on the basis of a medical certificate. Nursing and day-care facilities should be established, meeting adequate standards for equipment, hygiene and staff.

The period during which a woman is protected from dismissal before and after childbirth should be extended where possible to begin on the date when the employer is notified of the pregnancy by medical certificate until at least one month after the end of maternity leave, as provided for in Convention No. 103, unless there is serious fault on the part of the worker, the undertaking closes, or the contract of employment expires.

Night work and overtime work should be prohibited for pregnant and nursing women, who should also have sufficient rest periods. During pregnancy and for at least three months after confinement, a woman should be prevented from undertaking any work defined as prejudicial to her health or that of her child.

A woman employed in work which is defined as harmful to health should be entitled to transfer without loss of wages, as should a woman who presents a medical certificate saying that such a transfer is necessary for her health and that of her child.

**Background**

Specific Conventions for certain categories of workers in the rural sector have been adopted. Convention No. 110 concerns workers in plantations, and consists of 14 components relating to different aspects of social protection. Each of these components refers to provisions of other Conventions, which deal with these same concerns.

**Aim**

To improve the situation of plantation workers by making sure that certain provisions from other Conventions are applied to them.

**Summary**

The Convention regulates the employment of plantation workers in tropical or sub-tropical regions where certain specified crops are grown or produced for commercial purposes.

Part VII of the Convention deals with maternity protection. The period of maternity leave must be at least twelve weeks, and not less than six weeks’ leave is to be taken after a child is born. There may be a qualifying period for maternity leave, which is not to exceed a total of 150 days’ work with the same employer during the twelve months before the childbirth. It is possible for the leave period to be extended when the childbirth
is later than expected or in the event of illness. No pregnant woman shall be required to undertake any kind of work, which may be harmful.

Cash and medical benefits shall be provided. A contribution made to a compulsory social scheme or tax raised to provide these benefits should take account of the total number of women and men employed in the undertaking, regard-less of their sex.

A woman shall be entitled to interrupt her work to nurse her child, and she must be protected from dismissal during maternity leave. It shall be prohibited to dismiss a woman just because she is pregnant or a nursing mother.


**Background**

Limitation of the loads which women may lift, carry or move is the most wide-spread of the special protective measures, which relate to the type of work women may perform. For both women and men workers, manual handling of loads in its various forms is among the most dangerous of work activities in terms of accidents and injury to health.

In 1964 the participants at an ILO Meeting of Experts agreed that "women, owing to their physical structure and physiological characteristics, are incapable of the same energy output as men" and that "the effort required by the transport of loads may be particularly dangerous during preg-
nancy and can lead to miscarriages”. This resulted in the adoption of the Maximum Weight Convention in 1967. This assumption is now questioned by many countries who promote standards based on individual standards and find restrictions based on sex an obstacle to equal opportunity.

**Aim**

The protection of workers against the dangers of carrying heavy loads.

**Summary**

The Convention establishes the general rule that no worker shall be required or allowed to carry a load manually if it is so heavy that is likely to endanger her or his health or safety.

For women and young workers, assignment to manual transport of loads other than light loads shall be limited, and the maximum weight should be much less than that permitted for adult male workers.

**3.6.13. Night Work Conventions**

In industrialized countries towards the end of the nineteenth century, the number of establishments working at night in industries employing large numbers of women, such as the textile industry, increased from year to year. It was against this growing trend that the advocates of international regulations governing night work were fighting. Outrage at the conditions under which women -and often children -were employed and at the long
hours worked fuelled the move to impose legislative restrictions on night work.

Because of the large number of women employed in factories, early legislation imposed restrictions primarily in industrial enterprises. One of the ILO's first Conventions, the Night Work (Women) Convention 1919, (No.4), prohibited women in defined industrial undertakings from engaging in work during the night. This Convention has been revised twice in order to provide more flexibility. The major arguments put forward at that time were based on medical, social, political and economic grounds. It was argued that because women were often without full civil and political rights, such as the right to vote or to conclude a contract, they could easily be exploited without legislative protection. Women were also viewed as physically weaker, and it was therefore argued that they suffered the negative effects of night work to a greater extent than men. Other concerns included women's safety when travelling to and from work and the possibility of their consorting with men at night and generally becoming "morally degenerate". These concerns were further strengthened by the prevailing view that a woman's proper role in society was as a mother and homemaker: a woman's place was in the home caring for the home and family; work outside the home, especially at night, disrupted family life and thus interfered with society's well-being.
i) **Convention No. 89: Night Work (Women)(Revised), 1948; and Protocol 1990:**

**Aim**

The prohibition of night work for women in industry.

"Night" here means a period of at least 11 consecutive hours, seven of which fall between 10 p.m. and 7 a.m.

**Summary**

No woman of any age shall be employed during the night in any public or private industrial undertaking, except for those in which only members of the same family work.

The Convention does not apply to women holding responsible positions of a managerial or technical character or to women employed in health and welfare services who are not ordinarily employed in manual work.

A Protocol to this Convention and a new Convention and Recommendation on night work applying to all employed persons regardless of sex were adopted at the 77th Session of the International Labour Conference in 1990.

**The 1990 Protocol**

Variations in the duration of the night period and exemptions from the prohibition of night work by women in industry may be introduced by the
competent government authority after consulting the most representative em-
ployers' and workers' organizations.

The variations may be introduced through laws; regulations, collective
agreements or consultation, with the establishment of adequate safeguards.
They may be introduced in a particular branch of activity or a major estab-
lishment.

Safeguards are also provided for pregnant women and mothers of in-
fants.

ii) Convention No. 171: Night Work, 1990:

Background

Today millions of wage-earners are called upon to work at night. In
industrialized countries, the available figures show that night workers account
for between 7 and 15 per cent of the total wage-earning population and
that night work is performed to a considerably greater extent by men than
by women. Due to the lack of statistics, it is much more difficult to assess
the extent of night work among the wage-earning population of developing
countries. It is obvious that while night work is less prevalent than in the
industrialized countries, it tends to increase gradually in line with
industrialization and urbanization.

While a minority of ILO member States impose limitations on night
work for both women and men, most have enacted provisions forbidding
night work by children and young persons. The prohibition of night work by women in industry, once a widely accepted element of national labour legislation and inter-national instruments, has become an increasingly contentious issue. It was this controversy that originally led to the proposal that there should be standard-setting activities relating to night work, and in particular that the Night Work (Women) Convention (Revised), 1948 (No. 89), should be revised.

**Aim**

The protection of night workers.

**Summary**

The Convention applies to all employed persons, regardless of sex, except those employed in agriculture, stock raising, fishing, maritime transport or in-land navigation.

“Night” here means “a period of at least seven consecutive hours which include the hours between midnight and 5 a.m.”

It calls for specific measures to protect night workers’ health, provide maternity protection, help them meet family and social responsibilities, provide opportunities for occupational advancement, and compensate them appropriately in the form of working time, payments similar benefits.

These measures, which may be applied progressively, include health checks before assignment and at regular intervals afterwards, suitable
first-aid facilities, and safeguards in case of permanent or temporary unfitness.

Appropriate social services should be provided and night shifts should not be introduced without previous consultation.

For women workers, in particular, it calls for an alternative to night work, which might be transfer to day work or an extension of maternity leave before and after childbirth, for a period of at least sixteen weeks, of which at least eight weeks shall be before the expected date of childbirth.

The same arrangements shall also be available for additional periods during pregnancy and before or after childbirth upon production of a medical certificate attesting that it is necessary for the health of the mother or child.

During the above-mentioned period: a woman worker shall not be dismissed or given notice of dismissal except for justifiable reasons unconnected with pregnancy or childbirth; shall be guaranteed an income at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living; and shall not lose the benefits regarding status, seniority and access to promotion which may be attached to her regular night work position.

**Background**

In the 1930s there was no conflict of opinion over the drafting of the Convention prohibiting underground work for women as it was widely accepted that underground work in mines is harmful and dangerous for everyone, but especially for women.

**Aim**

The prohibition of the employment of women in underground work in any mine.

**Summary**

No female, of any age, should be employed in underground work in mines. Possible exemptions include: females holding positions of management who do not perform manual work; females employed in health and welfare services; females who, in the course of their studies, spend a period of training in the underground parts of a mine, or who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual occupation.

3.6.15. Other Conventions of special significance for women workers:

Apart from the Conventions that have already been examined above, there are others that concern women workers. These include:
Convention No. 4: *Night Work (Women)*, 1919

Convention No. 81: *Labour Inspection*, 1947

Convention No. 95: *Protection of Wages*, 1949

Convention No. 102: *Social Security (Minimum Standards)*, 1952

Convention No. 118: *Equality of Treatment (Social Security)*, 1952

Convention No. 129: *Labour Inspection (Agriculture)*, 1969

Convention No. 138: *Minimum Age*, 1973

Convention No. 148: *Nursing Personnel*, 1977


Convention No. 168: *Employment Promotion and Protection against Unemployment*, 1988

In summing up it may be said that international labour standards have been the principal means of action of the International Labour Organisation since its creation in 1919. The real significance of international labour standards is the practical effect they have on national practice. The fact that ILO conventions are binding once ratified can also prevent countries from slipping backwards and adopting regressive social legislations.

The constitution of the ILO introduced two fundamental innovations into international relations. First, the world community recognised the value of dealing collectively, not only with relations between states, but also with the very basis of the problems on which the progress, well-being and even the survival of mankind depended. In addition, a kind of legislative function was introduced at the international level. Traditional perceptions of in-
ternational relations and co-operation between sovereign states were profoundly modified by this development; to the extent that the current form of world organisation is modified on this concept.

The ILO standards have contributed immensely to the promotion and protection of human rights. As a matter of fact, the ILO standards and human rights have become practically inseparable. "The conventions adopted by the ILO reflect many facts of basic human rights which we hold dear and subscribe to as a common responsibility of mankind. The conventions and recommendations on conditions of work, social security, employment of young persons, migrant workers and tribal populations and so on are all designed to deal with both social and economic problems of the present day world".32