CHAPTER 3

ROLE OF INTERNATIONAL LABOUR ORGANISATION IN PROMOTING SOCIAL SECURITY

ILO is a large community including not only Governments, but also includes workers’ and employers’ representatives each with their global networks. The ILO has played a key role at historical junctures such as the great depression, decolonisation etc., and at present, it plays a productive frame work for affairs of globalisation. ILO was created to promote social progress and overcome social and economic conflicts of interest through dialogue and cooperation. The two triggers for the creation of ILO were war and revolution.¹

In the wake of the First World War, there was a need for fundamental changes in politics, economy and society and the same openness to change again emerged after second world war to reconstruct better world by promoting human rights and social progress.

The failure of any nation to adopt human conditions for labour is an obstacle in the way of other nations which desire to improve the conditions of labour in their own countries.² To achieve these objectives ILO came into existence in the year 1919 assuring overall development of working class of the world through standard setting and economic development of member countries, as a means

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² Para XIII of *Treaty of Versailles, 1919.*
to improve world economy. The vision of original constitution\textsuperscript{3} was taken a step further towards the end of the Second World War in a powerful declaration, and was adopted by the organisation at the conference held in Philadelphia 1944, which is consequently incorporated in to its constitution for the need of international and national action for universal social progress.\textsuperscript{4}

3.1 **ILO AND SOCIAL JUSTICE**

In the context of the ILO constitution, “Social Justice” can be interpreted so as to include within its ambit the conceptualized philosophy that 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. Thus, ILO was built on the fundamental belief that universal lasting peace can be established only if it is based upon social justice. Peace and justice go hand in hand whereas conditions of labour exists involving such injustice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperilled.

3.1.1 **Basic Principles of ILO**

The basic principles of ILO is based on the recognition of the fundamental social right guaranteed by law to all human beings who live from their labour and who finds themselves unable to work temporarily or permanently for reasons beyond their control. These objectives are as follows:

\textsuperscript{3} ILO’s First Constitution was prepared by the Commission of the ILO of the Peace Conference in 1919 and formed the part of Treaty of Versailles.

• Lasting peace cannot be achieved unless it is based on social justice, grounded in freedom, dignity, economic security and equal opportunity.

• Labour should not be regarded merely as a commodity or an article of commerce.

• There should be freedom of association for both workers and employers, along with freedom of expression and the right to collective bargaining.

• These principles are fully applicable to all human beings, irrespective of race, creed or sex.

• Poverty anywhere constitutes a danger to prosperity everywhere, and must be addressed through both national and international action.\(^5\)

An improvement in the conditions of labour is urgently required to progress towards the goals. These goals are in the form of seven central policy concerns which are as follows\(^6\):

• The promotion of full employment and rising standards of living, in occupations in which workers can apply their capabilities and contribute to the common well-being along with equal opportunity for men and women in achieving this end, and facilities for training and for migration.

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\(^5\) *Gerry Rodgers, Supra* note 1, at p.7.

\(^6\) *Ibid.*, at 8.
• The provision of an adequate living wage for all those employed, calculated to ensure a just share of the fruits of progress to all.

• The regulation of hours of work, including the establishment of a maximum working day and week and of weekly rest.

• Protection of children, young persons and women, including the abolition of child labour, limitation on the labour of young persons and the provision for child welfare and maternity protection.

• Protection of the economic and social interest of those workers who are employed in countries other than their own.

• The adequate protection of all workers against sickness, death and injury arising out of employment.

• The extension of social security measures to provide for old age and ill-health, a basic income to all those in need of protection, and comprehensive medical care.

3.1.2 Means of Governance

The ILO constitution identifies four means of governance:

• Tripartism: the representative of workers and the employers, enjoying equal status with that of governments, join with them in free discussion and democratic decision on social and economic measures, and collaborate in increasing productive efficiency.

\[\text{Ibid., at 9.}\]
• The adoption of international Conventions and Recommendations to be submitted to national authorities for ratification or other action.

• A system of inspection to ensure enforcement of the laws and regulations concerned.

• Collaboration among international bodies in order to ensure that all economic and financial policies contribute to social progress and well-being.

3.2  POWERS AND FUNCTIONS OF THE ILO ORGANS

The three principle organs of the ILO are constituted according to Article 2 of the ILO Constitution they are as follows:

1) General Conference of representatives of the Members, which is also called as the International Labour Conference.

2) Governing Body composed of representatives of Government, employers and workers in the given proportion, as described in Article 7 and

3) International Labour Office controlled by the Governing Body which was also known as the International Labour Office or the Secretariat of the ILO.

3.2.1 International Labour Conference

The general conference is the supreme decision making body since it provides a forum for discussing social, economic and labour related issues. The main function of the conference is to set and
adopt international labour standards in the form of conventions, recommendations and resolutions\textsuperscript{8}. It is a parliament of world labour. All the members of the ILO are the members of conference in which each member is entitled to send four members as its representatives in the ratio of 2:1:1 (Government : Employers : Workers). Each delegate may be accompanied by advisors where questions specifically affecting women are to be considered by the conference at least one of the advisors should be a woman. The conference appoints committees such as selection committee, credentials committee, conference drafting committee, conference on the application of conventions and the recommendations, finance committee of government representatives and other committees for assisting in various activities assigned to the same by it as contemplated in Articles 4 to 8 of the standing orders of ILO respectively. The conference may appoint any other committee to consider on report on any matter depending on the need.

The very idea of protecting the interest of the working class is two universal standards. Hence, the foremost obligation of the ILO is to set-forth various universal standards to improve the working conditions of the labouring class thereby ensuring social justice.

ILO convention provides a comprehensive procedure for drafting, discussing, voting and finally adopting a universal standard which takes the form of convention or recommendations. The chief executive body of the ILO takes note of the opinion expressed by various countries during discussion and also which are known to the governing body through the surveys made by the International labour office. The international labour office seeks the views of the

governments through the pre drawn detailed questionnaire on all aspects of the matter proposed to be discussed in the international Labour Conference for the purpose of adoption. Further the ILO constitution requires the governing body to make rules to ensure through technical preparation and adequate consultation of the members primarily concerned by means of the proprietary conference or otherwise prior to the adoption of a convention or recommendation by the conference.  

The ILO constitution contemplates that when the Conference has decided on the adoption of proposals regarding any item on the agenda, it rests with the Conference to decide whether such proposal should take form of a Convention or a Recommendation. However, in either case a majority of two-thirds of votes cast by the delegates present shall be necessary on the final vote for the adoption of the Convention or Recommendation, as the case may be, by the Conference.

3.2.1.1 Powers and Functions of the General Conference

The powers and functions of the International Labour Conference could be divided into three parts: namely:

- Legislative;
- Executive; and
- Financial.

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9 Article 14 (2) of the ILO Constitution.
10 Ibid., at Art. 19(2).
3.2.1.2 Legislative Powers and Functions

The legislative powers and functions of International Labour Conference are based on the idea of protecting the interest of the working class through universal standards with a view to improve the working conditions the labouring class and thereby ensuring social justice. These are as follows:

Adoption or Revision of International Labour Code consisting of Conventions and Recommendations,

- Amending the Constitution of the ILO,
- Determining whether an item on the agenda should take the form of an International Convention or a Recommendation to meet circumstances where the subject or aspect of it dealt with is not considered suitable or appropriate at that time for a Convention,\(^{11}\)
- Deciding whether any subject to be considered by it shall be included in the agenda for the following meeting,
- Deciding about any change in the seat of the International Labour Office,
- Admission and readmission of members of the ILO,
- Permission to members who are in arrears, to vote in the Conference, (Section D of International Labour Standing Orders)

\(^{11}\) Rule 19 of the ILO Constitution
• Deciding whether Conventions or Recommendations shall be considered in full Conference or referred to a Committee for report.

• Inclusion of new items in the agenda of the Conference

• Regulation of its own procedure.¹²

### 3.2.1.3 Administrative Powers and Functions

Ever since its establishment in the year 1919, the ILO's Conventions and Recommendations have been increasing in number and consequently the ratifications by the member countries also increased. Hence, ILO's Constitution confers the following administrative powers and functions for an effective and constant watch over the application of the conventions ratified by the members:

• Enforcement and follow up action of the Convention and Recommendations.

• Seeking explanation from the members who fail to ratify Conventions.

• Appointment of Director-General and Committees and sub-Committees including Regional Offices.

• Approaching the International Court of Justice (ICJ), as and when occasion arises for taking advisory opinion

• Convening Regional Conferences to undertake survey on labour and employment matters.

• Deciding powers of the Regional Committees

• Approval of the election of members to the Governing Body.\textsuperscript{13}

\section*{3.2.1.4 Financial and Budgetary Powers and Functions}

Each member has to pay travelling expenses of its delegates and their advisors etc., who are attending the meetings of the conference. Apart from that, ILO Constitution also provides for the following financial and budgetary arrangements:

• Approval, allocation and collection of the budget of ILO.

• Arrangements for the allocation of expenses among the Members of the ILO by Committee of Government representatives.\textsuperscript{14}

\section*{3.2.2 Governing Body}

The governing body of the ILO is executive wing of the organ which is an intermediary between the International Labour Conference and International Labour Office. It is also a tripartite body representing governments, employers and workers group. The governing body has the following six committees:\textsuperscript{15}

\textsuperscript{13} \textit{Ibid.}, at 46-47.
\textsuperscript{14} \textit{Ibid.}, at 47.
\textsuperscript{15} \textit{Ibid.}, at 50
Committee on the Freedom of Association (CFA)

Programme, Financial and Administrative Committee (PFA)

Committee on Legal Issues and International Labour Standards (LILS)

Committee on Employment and Social Policy (ESP)

Committee on Sectoral and Technical Meetings and Related Issues (STM), and

Committee on Technical Cooperation (TC)

### 3.2.2.1 Powers and Functions of Governing Body

The main functions of the Governing Body are to control and supervise the International Labour Office which is the chief secretariat of the ILO. The governing body exercise the following powers and functions specifically:

- Executing the policies and programmes approved by the International Labour conference.

- Appointment of the Director-General under the instrument of amendment to the Constitution of 1986, subject to the approval of the International Labour Conference.

- Considering the programmes and budget proposals submitted by the Director General and recommending the same to the Conference for approval.
• Drawing up of the Agenda of each session of the Conference

• Deciding specific actions to be taken on the resolutions thus adopted by the International Labour Conference.

• Setting the dates, duration, agenda and composition of all subsidiary meetings.

• Taking follow up actions on the proposals or conclusions of the Conference

• Examination of the applications of the Members about the Conventions and Recommendations adopted by the Conference.

• Coordination of the activities of the ILO with the other members of the United Nations Family and other regional and international organizations.

• Election of its own Chairman every year immediately after the Conclusion of the Conference.

• Seeking advisory opinion of the International Court of Justice with the approval of the International Labour Conference.

• Appointment of Commissions of Inquiry and Tribunals for quick disposal of disputes between members wherever possible.\textsuperscript{16}

\textsuperscript{16} Ibid., at 56.
3.2.3 **International Labour Office**

It is the third principal permanent organ of the ILO. It provides the Secretariat for all conferences and other meetings. International Labour Office also called as a Store House of Literature relating to World Labour and functions as a Liaison Office between a member country and ILO. International Labour Office headed by Director-General appointed by the governing body is responsible for the efficient conduct of the International Labour Office subject to the instructions of the governing body. The Director-General and his Deputy is required to attend all meetings of the Governing Body.\(^{17}\)

**3.2.3.1 Powers and Functions of International Labour Office**

The functioning of the International Labour Office as a unique feature that its Director-General and other staff have to discharge their responsibilities exclusively in international character. Therefore, having regard to the efficiency of the work of the office, the following powers and functions have been assigned:

1) The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which is proposed to bring before the Conference with a view to the conclusion of international Conventions, and the conduct of such special investigations as may be ordered by the Conference or by the Governing Body;

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\(^{17}\) Article 8(1) and (2) of the ILO Constitution.
2) Subject to such directions as the Governing Body may give, the International Labour Office shall:

(a) Prepare the documents on the various items of the agenda for the meetings of the Conference;

(b) Accord to governments at their request all appropriate assistance within its power in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection;

(c) Carry out the duties required of it by the provisions of the ILO Constitution in connection with the effective observance of Conventions;

(d) Edit and issue, in such languages as the Governing Body may think desirable, publications dealing with problems of industry and employment of international interest.\textsuperscript{18}

\section*{3.3 ILO ON HUMAN RIGHTS OF WORKERS}

The core themes of the ILO regarding human rights specifically focus on the subjects like Freedom of Association, Forced Labour and Discrimination. These themes are aimed at removing obstacles to access to work, through its attempt to eliminate discrimination on the basis of sex, ethnicity and otherwise. The themes are discussed as follows:

\textsuperscript{18} Article 10 of ILO Constitution.
3.3.1 Freedom of Association and Right to Collective Bargaining

Organising for the protection of economic interests was well established during the establishment of ILO. Over the years, ILO has adopted a certain number of other instruments on Freedom of Association and Collective Bargaining, but they are elaborations of the Conventions Nos.87 and 98. It is important to be noted that the Universal Declaration of Human Rights was adopted by the United Nations and include the phrase “everyone has the right to form and to join trade unions for the protection of his interests’ which is derived from Convention No.87”

Freedom of Association and Protection of the Right to Organise Convention (No.87) of 1948

The ILO adopted Convention NO.87 on 9th July, 1948 which consists of 21 Articles. This Convention is being adopted in accordance with and considering the preamble to the Constitution of the ILO that “recognition of the principle of freedom of association” to be an integral part and essential means of improving conditions of labour and of establishing peace. It also referred to the Declaration of Philadelphia which reaffirmed that “freedom of expression and of association are essential to sustained progress”.

The Convention contemplates that workers and employers, without any distinction, shall have the right to establish and to join organisations of their own choice without any previous

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authorisation. The workers’ and employers’ organisations shall also have the right to draw of their constitution and rules, to elect their representatives in full freedom to administer their activities and formulate programmes.

**Right to Organise and Collective Bargaining, Convention (No.98) of 1949**

This Convention consists of 16 Articles and provides for the protection to workers’ and employers’ organisations against any acts calculated to interfere with the right of workers to join or relinquish membership of any trade union and against any discrimination on account of their trade union activities. It also contemplates that workers’ and employers’ organisations shall enjoy adequate protection against any act of interference by each other or each other’s agent or members in their establishments, functioning or administration.

**3.3.2 Conventions Concerning Forced Labour**

Forced labour was the first human rights subject dealt with at the international level. At the First World War slavery and slavery like practices were among the first issues addressed by League of Nations. ILO has adopted Convention (No. 29) of 1930 and Convention No.105 of 1957 concerning abolition of forced labour.

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20 Article 2 of the Freedom of Association and Protection of the Right to Organise Convention (No.87), 1948.
21 Ibid., at Article 3.
22 Article1 Right to Organise and Collective Bargaining Convention (No.98), 1949.
23 Ibid., at Article 2.
Forced Labour Convention (No. 29) of 1930

The forced labour convention (No.29) was adopted by the ILO in 1930. It requires the state to abolish all forms of forced and compulsory labour. While identifying certain acceptable exceptions such as compulsory military service, prison labour under certain conditions and minor civic obligations. It also further states that illegal exaction of force or compulsory labour shall be punishable as penal offence and that the penalties imposed must be really adequate and strictly enforced. At present there have been improvements in many countries in relation to the abolition of forced labour. But however some of these practices regrettably still exist in number of countries in various forms including debt bondage.

Abolition of Forced Labour Convention (No.105) of 1957

This convention requires the member countries who ratifies has to undertake to suppress and not to make use of any form of forced labour or compulsory labour as a means of political coercion, education or punishment even for holding or expressing political views ideologically opposed to the established political, social or economic system.

Equal Remuneration Convention (No.100) of 1951

During the time of great depression in the 1930s, a concern for women’s equality and non discrimination employment based on sex began to be evident in ILO publications. The increasing concern for the promotion women’s equality reflected not only the increasing activities of women’s organisation but also the changes that had

25 Ibid., at Article 2.
taken place in women’s organisation in the work place.\textsuperscript{27} With the growing number of women entering the work place, ILO has reformulated the women’s issues as one of the human rights and a demand for equality. Hence, this convention was adopted with the specific aim of promoting equal pay for equal work to deal with the consequences of discrimination. This Convention has been discussed in detail under 3.5 of this Chapter.

**Discrimination in respect of Employment and Occupation Convention (No.111) of 1958.**

The principle of equality cannot be achieved unless all forms of discriminations are prevented. The ILO has adopted this Convention in accordance with its Declaration of Philadelphia which affirms that all human beings irrespective of race, sex, creed have the right to pursue their material and spiritual well being in condition of freedom and dignity, economic security and equal opportunity. The term discrimination is to include any distinction, exclusion or preference on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which nullify or impair the equality of opportunity or treatment in employment or occupation.\textsuperscript{28}

**3.4 ILO AND SOCIAL SECURITY**

The preamble of the ILO Constitution affirms the need for providing protection of the workers against the contingencies in work line such as sickness, maternity, employment injury, oldage thereby promoting income security resulting in improvement of the

\begin{footnotes}
\item[27] Gerry Rodgers, *Supra* note 1, at p.59.
\item[28] Article 1 of the Discrimination in respect of Employment and Occupation Convention (No.111) of 1958.
\end{footnotes}
conditions of labour. During the period from 1992 to 1995 International Standards were laid down for various risks to be covered under social insurance and allied schemes for applicability of specified classes of workers. The pre-war conventions and recommendations provided workmen’s compensations for accidents and occupational diseases, provision for old age, invalidity, widow’s and orphan’s pensions, maternity protection, provision for unemployment and maintenance of migrant’s pension rights.\(^\text{29}\)

In 1944, the Declaration of Philadelphia recognised the obligation of the ILO to further programmes to extend the social security measures to provide the basic income to all in need of such protection in addition to comprehensive medical care. Since, ILO has been committed to the cause of social justice in which social security measures are considered effective means of establishing social justice, it has adopted conventions and recommendations relating to social security by establishing norms to improve the labour conditions. Some of the conventions concerning various aspects of social security are discussed as follows:

**3.4.1 Conventions and Recommendations concerning Medical Care and Sickness Benefit**

**Sickness Insurance (Industry) Convention (No.24) of 1927**

In the field of social security, the contribution of the ILO is invaluable and it is manifested in this Convention.No.24 which the ILO adopted in its 10\(^\text{th}\) Session held at Geneva on 25\(^\text{th}\) May, 1927, concerning Sickness Insurance for Workers in industry and commerce and domestic servants.

The Convention requires the member-Countries which ratify to set-up a compulsory sickness insurance system which shall apply to manual and non-manual workers including apprentices employed by industrial undertakings, commercial undertaking, out-workers and even domestic servants. However, a member-Country may, by its national laws or regulations, make exceptions in respect of temporary employments, workers whose wage exceed an amount specified by the national laws or regulation, workers who are not paid money wages, out-workers, or the workers outside the wage-limit prescribed by the national laws or regulations.

The convention also provides that the sickness benefit shall be payable in cash to an insured person who is rendered incapable of work by reason of his abnormal bodily or mental health. The qualifying period and a waiting period of 3 days may also be prescribed.

It further provides for the dependents' benefit in the shape of medical benefits to the members of the family of the insured person dependent upon him and the national law may provide for such conditions under which such benefit may be given to the family members.

It is further clarified that the sickness benefits granted under this Convention shall not affect the obligations arising out of the convention relating to employment of women before and after the child birth, thus the maternity benefits of a woman are protected.\textsuperscript{30}

\textsuperscript{30} Khan, Supra note 8, at 97-98.
Sickness Insurance for Agricultural Workers Convention (No.25) of 1927

The convention envisages that the compulsory sickness insurance system shall apply to manual and non-manual workers including apprentices employed by agricultural undertakings subject to any exceptions prescribed by the law made by the member States.  

Medical Care and Sickness Benefits Convention (No.130) of 1969

The convention provides for medical care which shall be afforded with a view to maintaining, restricting or improving the health of the person protected and his ability to work and to attend to his personal needs. The persons protected in respect of contingencies for all employees, including apprentices and the wives and children of such employees. The sickness benefit shall be a periodical payment and a maximum limit may be prescribed for the rate of the benefit or for the earnings taken in to account for the calculation of the benefits.

The contingencies to be covered for sickness benefit or medical care shall include medical care of curative nature as well as medical care of preventive nature. The convention clarifies that persons who are in receipt of a social security benefit for invalidity, old age, death of the bread winner or unemployment, and wherever

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31 Maheshwaraswamy, supra note 12, at 236.
32 Article 9 of the Medical Care and Sickness Benefits Convention (No.130), 1969.
33 Ibid., at Art.10.
34 Ibid., at Art. 22.
35 Ibid., at Art. 7.
appropriate, the wives and children of such persons, shall continue to be protected under prescribed conditions.\textsuperscript{36}

**Medical Care Recommendation (No.69) of 1944**

The adoption of this recommendation is also in sequence to the obligation created by the ILO through its Convention (No.17) concerning Workmen’s Compensation (Accident) Convention of 1925 and the Convention Nos.24 and 25 relating to Sickness Insurance (Industry) and (Agriculture) of 1925 respectively.

It suggested as guidelines to the essential features of a medical care service, forms of medical care, complete coverage through social insurance medical care services, coverage through a public medical care service, medical care and its coordination with general health services, quality of services, working conditions and status of doctors, standards of professional skill and knowledge, raising of funds under social insurance schemes, supervision and administration of medical care services, settlement of claims and provision for making an appeal. Thus, the Recommendation (No.69) is a complete Code of medical care services which are meant to be followed as guidelines by the member-States.\textsuperscript{37}

**3.4.2 Invalidity, Old age and Survivors’ Benefits Convention (No.128) of 1967**

The ILO adopted this Convention (No.128) on its 51\textsuperscript{st} Session held on 7\textsuperscript{th} June, 1967 at Geneva. In fact this Convention is a very comprehensive document which has revised earlier 6

\textsuperscript{36} Article 7 of the Convention No.130 of 1969: Medical Care and Sickness Benefits.

\textsuperscript{37} Khan, Supra note 8, at 99.
Conventions that were adopted by ILO in the year 1933 are as follows:-

- Old-Age Insurance (Industry) Convention (No.35), 1933;
- Old-Age Insurance (Agriculture) Convention (No.36), 1933;
- Invalidity Insurance (Industry) Convention (No.37), 1933;
- Invalidity Insurance (Agriculture) Convention (No.38), 1933;
- Survivor’s Insurance (Industry) Convention (No.39), 1933 and
- Survivor’s Insurance (Agriculture) Convention (No.40), 1933.\(^{38}\)

This convention has also relevance to Convention No.130 of 1969 as it provides for provision besides for general aspects, invalidity benefit, old age benefit, survivor’s benefit, standards to be complied with periodical payment, common provision, and final provisions. A member whose economy is insufficiently developed may avail itself certain temporary exceptions provided for in Articles 9, 13, 16, 22 etc., by a declaration accompanying its ratification. The contingency covered shall include incapacity to engage in any gainful activity to a prescribed extent which incapacity is likely to be permanent or persists after a termination of a prescribed period of temporary or initial incapacity. The persons protected under this Convention comprise of all employees, apprentices or class of the economically active population constituting not less than 75% of the whole economically active population or all residents or residents

\(^{38}\) Maheshwaraswamy, Supra note 12, at 241.
whose means during the contingency do not exceed the limits prescribed under Article 28 of this Convention.\textsuperscript{39}

The benefit shall be granted throughout the contingency. The contingency covered by survivors’ benefit shall include loss of support suffered by the widow or child. Article 22 of this convention provides for the persons entitled to the benefit under this Convention such as wives, children etc. The survivors’ benefits shall be a periodical payment calculated as per Articles 26 and 27 of this convention. In case of a periodical payment the rate of benefit shall be such as to attain at least the percentage indicated therein of the total of the previous earnings of the beneficiary or his breadwinner etc.\textsuperscript{40}

\textbf{Invalidity, Old-Age and Survivors’ Benefits Recommendation (No.131) of 1967}

This recommendation contains general provisions, persons protected, contingencies covered and the benefits. The persons protected are casual employees and persons economically active. The definition of invalidity should take into account incapacity to engage in an activity involving substantial gain. A reduced benefit should be provided in respect of partially invalid persons. Old age benefit with pension, widow’s right to survivors’ benefit etc., are also covered by this recommendation. \textsuperscript{41}

\textsuperscript{39} Ibid., at 241-242.
\textsuperscript{40} Ibid., at 242.
\textsuperscript{41} Ibid., at 243.
Older Workers Recommendation (No.162) of 1980:

Recommendation (No.162) of 1980 provides for provisions relating to older workers. It applies to all workers who are liable to encounter difficulties in employment and occupation because of advancement in age. Employment problems of such workers should be dealt within the context of overall and well balanced strategy for a full employment and, at the level of the undertaking, of an overall and well balanced social policy by giving due attention to the groups of all population thereby ensuring that employment problems are not shifted from one group to another. This recommendation also contains inter alia provisions relating to equality of opportunity and treatment protections such as measures to enable older workers to continue in employment under satisfactory conditions with the participation of the representative organisations of employers and workers etc., preparation for and access to treatment and implementations. This recommendation contains benefits like old age, retirement, long service, etc.\(^{42}\)

3.4.3 Conventions and Recommendations relating to Employment Injury Benefit

The demand for compensation to employees in case of injury arising out of and in the course of the employment of the employer was gaining attention as early as nineteenth century itself. Hence, ILO has adopted the following conventions relating to workmen’s compensation.

\(^{42}\) Ibid.
• Workmen’s Compensation (Agriculture) Convention (No.12), 1921

• Workmen’s Compensation (Accidents) Convention (No.17), 1925

• Workmen’s Compensation (Occupational Diseases) Convention (No.18), 1925

• Equality of Treatment (Accident Compensation), Convention (No.19), 1925

• Workmen’s Compensation (Occupational Diseases) (Revised) Convention (No.42), 1934

• Employment Injury Benefits Convention (No.121), 1964

**Workmen’s Compensation (Agriculture) Convention (No.12) of 1921**

This convention contemplates that a member country which ratifies shall extend the protection and benefits of its laws and regulations to provide for the compensation of workers for the personal injury by accident arising out of and in the course of employment.\(^43\) This Convention which has come into force on 16\(^{th}\) February, 1925 was revised by Convention No.121 of 1964. Each member who ratifies this Convention agrees to take necessary action for effective enforcement and to apply it to its colonies, positions and protectorates.\(^44\) A member country may denounce it after expiration of ten years or the date on which it comes to force.

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\(^43\) Article 1 of the Workmen’s Compensation (Agriculture) Convention (No.12), 1921

\(^44\) Ibid., at Article 4.
Workmen's Compensation (Accidents) Convention (No.17) of 1925

Each member country which ratifies this convention should ensure that workmen who suffer personal injury due to industrial accidents or in case of death, their dependants shall be compensated on terms at least equal to those provided for by this Convention. The laws and regulations relating to workmen’s compensation shall apply to workmen, employees and apprentices employed by any enterprise, undertaking in establishment of whatsoever nature, whether public or private.

The compensation payable to the injured workman or his dependants where permanent incapacity or death results from the injury shall be paid in the form of periodical payments in a lump sum either wholly or partially. In case of incapacity compensation shall be paid not later than as from the fifth day after the accident.45

Workmen's Compensation (Occupational Diseases) Convention (No.18) of 1925

Under this Convention each member who ratifies it shall undertake to provide for payment of compensation to workmen incapacitated by occupational diseases or in case of death to their dependants in accordance with the general principles of national law. Occupational diseases are listed in the Schedule annexed to this Convention.46

45 Maheshwaraswamy, Supra note 12, at 245.
46 Ibid.
Equality of Treatment (Accidents Compensation) Convention (No.19) of 1925

The member countries which ratify this Convention should undertake to grant nationals of other member countries who suffer personal injury due to industrial accidents happening in its territory or to their dependants, the same treatment in respect of workmen’s compensation as it grants to its own nationals.47

Workmen’s Compensation (Occupational Diseases) Convention (No.42) of 1934

Under this convention the list of occupational diseases has been increased to ten from the list provided under Convention (No.18) as incorporated in the Schedule appended thereto. The additional entries of the list relate to silicosis, phosphorous, arsenic poisoning by benzene, poisoning by the halogen derivatives of hydrocarbons, pathological manifestations and primary epitheliomatous cancer of the skin.48

Employment Injury Benefits Convention (No.121) of 1964

This Convention which has come into force on 20th July, 1967 revises the original Convention (No.12) of 1921 contains 39 Articles with a Schedule consisting of list of occupational diseases and an annex relating to industrial standards, industrial classification of all economic activities consisting of two Schedules, namely, Schedule I contains a list of occupational diseases as amended later and incorporated in annex to Convention (No.130) of 1968 and Schedule II containing periodical payments to standard

47 Khan, Supra note 8, at 88.
48 Maheshwaraswamy, Supra note 12, at 246.
beneficiaries. Most of the provisions of this convention are similar to that of Convention (No.130), medical care and allied benefits in respect of a morbid condition shall comprise general practitioner and specialist, inpatient and outpatient care, dental care, nursing care, maintenance in hospitals etc., including emergency treatment and follow-up treatment.\footnote{Article 10 of the Convention No.121 of 1964: Benefits in the case of employment injury.}

**Recommendations relating to Employment Injury and Workmen’s Compensation**

The Recommendations relating to employment injury and workmen’s compensation are as follows:

- **Workmen’s Compensation (Jurisdiction) Recommendation (No.23), 1925**
- **Equality of Treatment (Accident Compensation) Recommendation (No.25), 1925**
- **Employment Injury Benefits Recommendation (No.121), 1964**
- **Protection of Workers’ Claim (Employer’s insolvency) Recommendations (No.180), 1992**
- **List of Occupational Diseases Recommendation (No.194), 2002**

**Workmen’s Compensation (Jurisdiction) Recommendation (No.23) of 1925**

This Recommendation deals with jurisdiction in respect of disputes on workmen’s compensation claims. Every such dispute should be relating to preferably dealt with by a Special Court or
Board of Arbitration comprising with or without the addition of regular Judges in equal number of employers and workmen’s representatives appointed to act as adjudicators.\(^{50}\)

**Equality of Treatment (Accident Compensation) Recommendation (No.25) of 1925**

This Recommendation is concerned with equality of treatment for national and foreign workers as regards workmen’s compensation for accidents. Such equality must be with regard to facilitating the payment of compensation, settlement of disputes, exemption from duties and taxes etc. Under this recommendation wherein any country there does not exist any social security system relating to workmen’s compensation for industrial accidents the Government concerned should afford facilities to alien workers enabling to benefit by the laws and regulations in their countries pending the institution of such a system in that country.\(^{51}\)

**Employment Injury Benefits Recommendation (No.121) of 1964**

This Recommendation requires the member countries to extend the application of its legislation for employment injury benefits to any categories of employees not covered under Article 4, paragraph 2 of Employment Injury Convention of 1964. It requires that in respect of such person’s employment injury or analogous benefits shall be secured. Special schemes applicable to seafarers including sea-fishermen and public servants should be provided benefits in case of an employment injury which are not less favourable that those provided in the relevant convention of 1964. The recommendation contains the industrial accidents which are to

\(^{50}\) *Khan, Supra* note 8, at 87.

\(^{51}\) *Maheshwaraswamy, Supra* note 12 at 248.
be covered by the benefit under this convention. It also covers diseases known to arise out of the exposures to substances or dangerous conditions in processes, trades or occupations as occupational diseases.\(^5\)

**Protection of Workers’ Claims (Employer’s Insolvency) Recommendation (No.180), 1992**

Under this recommendation, the term *insolvency* means the situations in which, in accordance with national law and practice, proceedings have been opened relating to an employer’s assets with a view to the collective reimbursement of its creditors.

Where the insolvency proceedings cannot ensure rapid payment of workers’ privileged claims, there should be a procedure for accelerated payment to ensure that the claims are paid, without awaiting the end of the proceedings, out of available funds or as soon as funds become available, unless the rapid payment of workers’ claims is ensured by a guarantee institution. These accelerated payments and guarantee institutions operations shall be subject to the other provisions of this recommendation. The protection of workers’ claims by a guarantee institution should have as wide coverage as possible.\(^5\)

**List of Occupational Diseases Recommendation (No.194) of 2002**

This Recommendation provides a list of occupational diseases in its Annex. This Annex should be regularly reviewed and updated through tripartite meetings of experts convened by the governing body of the ILO. The national list of occupational diseases

\(^5\) *Maheshwaraswamy, Supra* note 12, at 248-250.
should be reviewed and updated with due regard to the most up to
date list established in accordance with paragraph 3 of this
recommendation.\textsuperscript{54}

\textbf{3.4.4  Convention (No.102) of 1952 concerning Minimum Standards of Social Security}

This Convention has been adopted by ILO in its 35\textsuperscript{th} Session held at Geneva on 11\textsuperscript{th} June, 1952. It is a very comprehensive convention covering the following benefits:

\textbf{Medical Care:} Articles 7 to 12 of part II of this convention provides for Medical care to the persons covered in respect of condition requiring medical care of a preventive or curative nature. The contingencies include morbid condition, pregnancy and confinement and their consequences.\textsuperscript{55}

The medical care should be available to the prescribed classes of employees, constituting not less that 50 per cent of all employees and their wives and children, or it should cover atleast 20 per cent of the prescribed classes of economically active population and their wives and children.\textsuperscript{56}

The nature of medical care includes general practitioner care including domiciliary visits, specialists care at hospitals both for in-patients and out-patients. In case of maternity or confinement and its consequences, pre-natal and post-natal care is also to be provided.\textsuperscript{57}

\textsuperscript{54} \textit{Ibid}.
\textsuperscript{55} Article 8 of the Convention No.102 of 1952 concerning Minimum Standards of Social Security.
\textsuperscript{56} \textit{Ibid.}, at Article 9.
\textsuperscript{57} \textit{Ibid.}, at Article 10.
**Sickness Benefit:** The Sickness benefit covers the contingencies like incapacity for work resulting from any morbid condition and involving suspension of earnings. The persons protected shall comprise at least 50 percent of the prescribed employees, 20 percent of the prescribed classes of economically active population, and all residents whose means do not exceed prescribed limits in accordance with Article 67 of the Convention. Such benefit is available to such persons who comply with such qualifying conditions considered necessary to preclude abuse. The sickness benefit may be limited to 26 weeks in each case of sickness.

**Un-Employment Benefit:** The contingency covered shall include suspension of earnings, as defined by national laws, due to inability to obtain suitable employment in the case of a person protected who is capable of and available for work.

The nature of unemployment benefit shall be the periodical payments calculated in such a manner as to comply either with the requirement of Article 65 or 66, or in case of residents as required by Article 67.

**Old-Age Benefit:** It is incorporated under Part V of the convention which consists of Articles 25 to 30, deals with old-age benefit and prescribed the contingency to be covered as survival beyond a prescribed age not exceeding 65 years. The percentage of the

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58 Ibid., at Article 14.
59 Ibid., at Article 16.
60 Ibid., at Article 20.
61 Ibid., at Article 22.
62 Ibid., at Article 25.
beneficiaries to be covered is same as in the case of Medical Care, Sickness Benefit or unemployment benefits.\textsuperscript{63}

The nature of old-age benefit is in the nature of periodical payments calculated in such a manner as to comply with the requirements of Article 65 or 66 and in the case of residents, with the requirement of Article 67.\textsuperscript{64}

The qualifying period for old-age benefit may be 30 years of contribution or employment or 20 years of residence or where, in principle, all economically acting persons are protected, to a protected who has completed a prescribed qualifying period of contribution and in respect of whom, while he was of working age, the prescribed early average number of contribution has been paid.\textsuperscript{65}

**Employment Injury Benefit:** This is incorporated under Chapter VI, consisting of Articles 31 to 38, which deals with employment injury benefit. The contingencies covered include the following conditions that result from the employment due to accident or prescribed disease, namely:-

- a morbid conditions;

- incapacity for work resulting from such condition as may be defined by national law or regulations and involve suspension of earnings;

- total or partial loss of earning capacity in excess of a prescribed degree, likely to be permanent;

\textsuperscript{63} Ibid., at Article 27.  
\textsuperscript{64} Ibid., at Article 28.  
\textsuperscript{65} Ibid., at Article 29.
• loss of support suffered by the widow or child as the result of the death of the bread-winner.\(^{66}\)

**Family Benefit:** Under Part VII of the Convention, Articles 39 to 45, deals with family benefit and the contingency covered shall be the responsibility for maintenance of children and the percentage of persons protected is same as in the case of old age etc.\(^{67}\)

The nature of family benefit is in the nature of periodical payments granted to any person protected having completed the prescribed qualifying period, or the provision to children for food, clothing, housing, holidays or domestic help or combination of both the benefits.\(^{68}\) The qualifying period prescribed consists of three months of contribution or one year or residence.\(^{69}\)

**Maternity Benefit:** Part VIII of the Convention consisting of Articles 46 to 52 deals with maternity benefit and the contingency covered includes pregnancy and confinement and their consequences and suspension of earnings as defined by national laws.\(^{70}\)

The percentage of persons protected is same as in the case of old-age or other similar benefits and ranges from 50 percent to 20 percent in the prescribed conditions.\(^{71}\)

The nature of maternity benefit includes medical care during pre-natal, confinement and post-natal care either by a medical practitioner or by qualified midwives. The maternity benefit shall be

\(^{66}\) Article 32 of the Convention No.102 of 1952 concerning Minimum Standards of Social Security

\(^{67}\) *Ibid.*, at Articles 40 and 41.

\(^{68}\) *Ibid.*, at Article 42.

\(^{69}\) *Ibid.*, at Article 43.

\(^{70}\) *Ibid.*, at Articles 46 and 47.

afforded with a view to maintaining restoring or improving the health of the women protected.\textsuperscript{72}

In case of suspension of earning resulting from pregnancy or confinement and their consequences, the benefit shall be a periodical payment calculated in the manner prescribed in Article 65 or Article 66 and all such benefits including those specified in Article 49 shall be granted throughout the contingency upto 12 weeks, unless a longer period is prescribed by the national laws.\textsuperscript{73}

\textbf{Invalidity Benefit:} Articles 53 to 58 of part IX of the convention deals with invalidity benefit and the contingency covered includes inability to engage in any gainful activity or the inability continuing after the exhaustion of sickness benefit.\textsuperscript{74}

The percentage of persons protected is same as in the case of old-age, sickness or other similar benefits and ranges from 50 percent to 20 percent of the population of the prescribed employees.\textsuperscript{75}

The invalidity benefit is in the nature of periodical payment calculated in accordance with the requirements of Article 65 or Article 66 and in the case of residents, in accordance with Article 67.\textsuperscript{76} The qualifying period for invalidity benefit is 15 years of contribution of 10 years of residence.\textsuperscript{77} The validity benefit has to be

\begin{flushleft}
\textsuperscript{72} \textit{Ibid.}, at Article 49.  \\
\textsuperscript{73} \textit{Ibid.}, at Article 52.  \\
\textsuperscript{74} \textit{Ibid.}, at Articles 53 and 54.  \\
\textsuperscript{75} \textit{Ibid.}, Article 55  \\
\textsuperscript{76} \textit{Ibid.}, at Article 56.  \\
\textsuperscript{77} \textit{Ibid.}, Article 57
\end{flushleft}
continued throughout the contingency or until an old-age benefit becomes payable.\textsuperscript{78}

**Survivor's Benefit:** Articles 59 to 64 under part IX deals with survivor's benefit and the contingency covered includes the loss of support suffered by the widow or child as the result of the death of the bread-winner. However such benefit may be suspended or reduced by national laws if such person is engaged in any prescribed gainful activity.\textsuperscript{79}

The percentage of the persons protected is same as prescribed in case of other benefits being 50 percent to 20 percent, as the case may be, in the prescribed conditions\textsuperscript{80}. The benefit shall be calculated in accordance with the requirements of Article 65 or Article 66 and in the case of residents, in accordance with Article 67.\textsuperscript{81} The qualifying period is 15 years of contribution or employment or 10 years of residence\textsuperscript{82} and such benefit shall continue throughout the contingency.\textsuperscript{83}

### 3.5 ILO CONVENTIONS AND RECOMMENDATIONS TO PROMOTE GENDER EQUALITIES AND WOMEN RIGHTS

Women today in addition to the traditional un-paid labour required to maintain a house-hold, increasingly is taking part in paid work to augment personal or family income. Since women are getting exposed to the outside world they face gender oppression. Hence, protection to women workers had been the special concern of the ILO. The United Nations Convention on the Elimination of all

\textsuperscript{78} Ibid., at Article 59.
\textsuperscript{79} Ibid., at Article 60.
\textsuperscript{80} Ibid., at Article 61.
\textsuperscript{81} Ibid., at Article 62.
\textsuperscript{82} Ibid., at Article 63.
\textsuperscript{83} Ibid., at Article 64.
Forms of Discrimination against Women spells out the areas of protection namely:-

- Prohibition of dismissal on the ground of pregnancy.
- Maternity and marital status with maternity leave and pay without loss of employment, seniority or social protection.
- Providing special protection during pregnancy in harmful jobs.
- Encouraging child care facilities.

ILO provides similar benefits as Constitution of the ILO included in its objectives the need for affecting women to improve their status by eliminating discrimination and also ensuring equality and social justice. The International Labour Conference has set out the following aims of ILO in respect of women workers:

- Guarantee of all civil and political rights;
- Opportunity to improve education;
- Better conditions for finding employment;
- Equal pay for equal work;
- Legal protections against dangerous working conditions
- Maternity protection; and
- Trade union rights at par with male workers.
3.5.1 ILO Conventions and Recommendations relating to Employment of Women

Gender Equality:

Gender equality is a basic condition for economic, social and political development of the country. ILO Constitution states that, “on 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 economic security and equal opportunity.”

Concerning Equal Remuneration for Men & Women Workers for Work of Equal Value Convention (No.100) of 1951

The ILO adopted the C.No.100 in its 34th Session held at Geneva on 6th June, 1951 which contains 14 Articles. Equal remuneration to men and women workers for work of equal value, in fact, refers to rates of wages determined without any discrimination based on sex.

The convention also suggests the means of obtaining such equal treatment by requiring the member-countries that ratify this convention to achieve the object through national laws or regulations or through recognised machinery legally established for wage-determination. Such determination of wages can also be made through collective agreements between employers and workers or it can be a combination of all the above methods.

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84 Preamble of ILO Constitution and the Philadelphia Declaration, 1944.
The Convention also contemplates measures to assist in giving effect to the provisions of this Convention, and to promote objective appraisal of jobs on the basis of the work to be performed.

It also enshrines that each member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. A pioneering feature of this Convention was its guarantee of equal pay for work of equal value and not just for the same or similar work. This addresses gender biases in the way labour markets are structured, because most women do different jobs from most men. Equal remuneration for work of equal value is integral to the fundamental principle of the elimination of discrimination in employment and occupation and has been a concern of the ILO since its founding.85

**Concerning Equal Remuneration for Men & Women for Work of Equal Value Recommendation (No.90) of 1951**

It provides, among other provisions designed to facilitate the application of this principle, for equality of opportunity and treatment for women workers in such matters as vocational guidance, vocational training placement and access to various occupations and posts.

It is contemplated that all the members, while implementing the Convention (No.100) in their own territories, should have regard

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to the methods of application adopted by others countries and which have been found satisfactory. The Member-Countries are also suggested to take appropriate measures, in consultation with the Employers' and Workers' Organisations to ensure, as rapidly as possible, the application of the principle of equal remuneration to men and women for the work of equal value. Such wages based on the principles of equal remuneration should be fixed by the member-countries in respect of industries, undertakings and other services under the control of the Public Ownership.

**Concerning Equal Opportunity for Workers with Family Responsibilities Convention (No.156) of 1981**

The ILO in its 67th Session held at Geneva on 3rd June, 1981 adopted Convention (No.156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers with Family Responsibilities which consists of 19 Articles and has been ratified by 36 member countries. This Convention is a special effort on part of the ILO to extend the protection to the workers with family responsibilities which several other Conventions of the ILO have provided, but are not likely to benefit the workers who are not able to prepare for entering into or participating in the advancing economic activity particularly in view of their family responsibilities.

The ILO also made a special note of various International Instruments concerning equality of opportunity and treatment for men and women and, in particular para 14 of the Preamble of the United Nations’ Convention on the Elimination of all Forms of Discrimination Against Women, 1979, commonly known as CEDAW stressed the need for yet another Convention to resolve the problems of workers with family responsibilities. The ILO identified that many of the problems faced by all workers are aggravated in case of
workers with family responsibilities and therefore they need special facilities and protection to them.

The Convention calls upon the member-countries to aim their national policy to enable the workers with family responsibilities to engage themselves in employment and to the extent possible, without conflict between their employment and family responsibilities.\textsuperscript{86}

\subsection*{3.5.2 Conventions and Recommendations relating to Maternity Benefits}

Maternity is a state of disability in women from undertaking any paid work during the few weeks immediately preceding and following child birth. Women require particular care during the advance stage of pregnancy, confinement and post-natal period. Employers tended to terminate the services of a women employee when they found that maternity interfere with performance of her normal duties. Poor health, additional medical expenses along with loss of employment made the women employees economically vulnerable during the period of childbirth, plunging her into a crisis of debt and high interest expenses. Consequently, she often did not take adequate rest and started working soon after the childbirth with adverse effects on her health\textsuperscript{87} and more specifically when the fact is that the mother-child pair requires close and continuous proximity to each other during this crucial period.

Pregnancy and maternity are uniquely biologically specific women, reproduction itself is a social function that should be

\begin{flushleft}
\textsuperscript{86} Khan, \textit{Supra} note 8, at 72-73.

\end{flushleft}
protected. Our Indian Constitution also provides that the state must make provisions for securing just and human conditions of work and maternity relief.

Hence, ILO has set standards to protect women employees in relation to work that may cause risks to maternity.

**Maternity Protection Convention (No.3) of 1919**

This convention stipulates that a woman shall not be permitted to work during the six weeks following her confinement; and shall have the right to leave her work if she produces a medical certificate stating that her confinement will take place within six weeks. The purpose of this Convention was to ensure that a woman employee would be able to sustain herself and her baby during the period immediately before and after her confinement.

**Maternity Convention (No.103) of 1952**

Convention (No.3) was subsequently revised by Convention (No.103) in the year 1952 which has enlarged the scope of protection to the women by extending the coverage of women worker in non-industrial undertaking including agricultural operations. The improvement made in this Convention is extending the duration of maternity leave to the women worker from six weeks to twelve weeks and also provides for cash benefits in addition to medical benefits.

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89 Article 42 of the Indian Constitution.
Maternity Protection Convention (No.183) of 2000

Broadly, the ILO Maternity Protection, 2000 provides for compulsory six weeks postnatal leave (not less than 14 weeks maternity leave); covers all married and unmarried women including those in a typical forms of work; cash benefits of two-thirds of a woman’s previous earnings or equivalent payment; pregnant and nursing women not obliged to perform work that is detrimental to the mother or child; protection against discrimination in employment on grounds of maternity; unlawful for employer to dismiss a woman during pregnancy; guaranteed right to return to the same position or an equivalent position with equal payment; prohibition of pregnancy testing at the time of recruitment and right to one or more daily breaks for breastfeeding.

Maternity Protection Recommendation, 2000

The Recommendation states that the member should endeavour to extend the period of maternity leave to atleast 18 weeks. During pregnancy, exposure to certain hazardous and arduous job or unsafe working environment may have adverse effects on the health of a women employee and her unborn child. The recommendation provides the measures to protect the health of pregnant women and unborn child. The Recommendation also outlines that where practicable, provision should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the work place.90

90 Article 9 of ILO Maternity Protection Recommendation, 2000.
3.5.3 Conventions relating to Safe Working Condition and Protection of Women Employees

The ILO has passed the following conventions for prohibiting night shift for women workers:

- Night Work Convention (No.4), 1919
- Night Work (Women) (Revised) Convention (No.41), 1934
- Night Work (Women) Revised) Convention (No.89), 1948
- Night Work Convention (No.171), 1990

3.5.3.1 Employment of Women During the Night Convention No.4 of 1919

This Convention which has come into force on 13th June, 1921 and revised in 1934 by Convention No.41 of 1948 as also by Convention No.89 of 1948 contains 7 Articles. For the purpose of this Convention the term ‘night’ means a period of at least eleven consecutive hours including the interval between 10 O’clock in the evening and 5 O’clock in the morning. In countries where no Government regulations are yet to be employed to the employment of women in industrial undertakings during the night, the term ‘night’ be declared to be a period of only ten hours including the interval for a maximum period of three hours. Under this Convention, women without distinction of age shall not be employed during the night in any public or private industrial undertaking or in any branch thereof other than an undertaking in which only members of the same family are employed.\(^9\)

\(^9\) Maheshvaraswamy, Supra note 12, at 154.
3.5.3.2 Employment of Women During Night (Revised)
Convention (No.41) of 1934

This Convention which has come into force on 22nd November, 1936 is a revised version of the Convention No.4 of 1919. This Convention does not apply to women holding responsible positions of management who are not ordinarily engaged in manual work. Except this new addition to the provision of Convention No.4, the other provisions of this Convention are similar to that of Convention No.4.92

3.5.3.3 Night Work by Women Employed in Industry (Revised)
Convention (No.89) of 1948

This Convention revises the earlier two Conventions of 1919 and 1936. It contains general provisions, special provisions and final provisions. It defines the term ‘industrial undertakings’ so as to include mines, quarries and other works for extracting minerals etc.93 This convention rightly modifies the term ‘night’ from that defined in earlier Conventions by adding that night includes an interval of at least seven consecutive hours falling between 10 O’clock in the evening and 7 O’clock in the morning. This Convention added further a provision whereby women employed in health and welfare services who are not ordinarily engaged in manual work are not covered by it, besides those employed in positions of technical character.94 Remaining provisions of these Conventions are more or less similar to that of earlier Convention Nos. of 4 and 41.

92 Ibid., at 155.
93 Article 1 of the Convention No.89 of 1948: Night work by women employed in industry (Revised).
94 Ibid., at Art.8.
3.5.3.4 Night Work Convention (No.171) of 1990

When the ILO revised the 1919 night work instruments in 1949 with the Night Work convention (Revised) (No.89), it retained the prohibition on women working at night. It was not until 1990 that the conference eventually adopted a more balanced position with the night work convention (No.171) and its accompanying recommendation and a protocol to convention (No.89) allowing more equal treatment.95 This convention permits variations in the duration the night period and exemptions from prohibition on night work.96

3.5.3.5 Underground Work (Women) Convention (No.45) of 1935

The ILO in its 19th Session held at Geneva on 4th June, 1935, adopted this Convention (No.45) concerning the Employment of Women on Underground Work in mines of all kinds.

The Convention has duly prohibited the employment of women underground in a mine and also provided for certain exemption that can be made by the national law. The Convention lays down that no female whatever her age, shall be employed on underground work in any mine.

3.5.3.6 Reduction of Hours of Work Recommendation (No.116) of 1962

The ILO provides that in carrying out measures for progressively reducing hours of work, priority should be given to industries and occupations which involve a particularly heavy physical or mental strain or health risks for the workers concerned,

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95 Gerry Rodgers, Supra note 1, at 58.
96 Surinder, Supra note 85, at 133.
particularly where those consist mainly of women and young persons.

3.5.3.7 ILO’s Maximum Weight Convention (No.127) of 1967

This convention provides that the maximum weight for the load to be carried by women employees shall be substantially less than that permitted for male workers. In this way, the ILO Convention protects women employees against the risks arising from lifting of heavy loads. The underlying principle behind this is that if women carry excessive loads, their intra-abdominal pressure may rise abruptly and consequently, cause disturbances of blood circulation in the pelvic organs and lower limbs, menstrual disorders, miscarriages, or stillbirths. These disorders are more frequent in case a woman has been carrying heavy loads from an early age.

3.5.3.8 ILO’s Occupational Health Services Convention, (No.161) of 1985

This Convention stipulates that all workers shall be informed of health hazards involved in their work.\(^{97}\)

This Convention further ordains that occupational health services shall be informed by the employer and workers of any known factors and any suspected factors in the working environment which may affect the workers’ health.\(^{98}\) Apart from this, the ILO’s Occupational Safety and Health Convention, 1981 (No.155) states

\(^{97}\) Article 13 of ILO’s Occupational Health Services Convention, 1985.

\(^{98}\) Ibid., at Article 14.
that workers and their representatives in the undertaking should be are given appropriate training in occupational safety and health.\textsuperscript{99}

3.5.3.9 Welfare Facilities Recommendation (No.102) of 1956

ILO stipulates special provisions for women for providing sitting arrangements for them while at work and for rest rooms to meet their needs. It is interesting to observe that only the Contract Labour (Regulation and Abolition) Central Rules, 1971 and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 contain provision for this.

3.5.3.10 ILO’s Home Work Convention (No.177) of 1996

It stipulates that the national policy on home work shall promote, as far as possible, equality of treatment between home workers and other wage earners, protection against discrimination in employment and occupation, protection in the field of occupational safety and health, remuneration, minimum admission age, and maternity protection.\textsuperscript{100}

3.5.3.11 Decent Work for Domestic Workers Convention (No.189) and Recommendation (No.201) of 2011

Domestic work continues to be undervalued and invisible which is mainly carried out by women and girls where significant proportion of work force are exploited. Hence, the Convention concerning decent work for domestic workers is adopted on 16\textsuperscript{th} June, 2011 by the ILO’s International Labour Conference.

\textsuperscript{99} Ibid., at Art 19(d).
\textsuperscript{100} Article 4 of the ILO’s Home Work Convention, 1996 (No.177).
This Convention is historically important because, for the first time, International instruments are applied to an essentially informal segment of the global work force. According to this convention, domestic workers should be informed about their terms and conditions of employment in an appropriate, verifiable and easily understandable manner preferably written contracts.\(^{101}\)

The convention contemplates that measures should be taken to ensure that domestic workers enjoy minimum wage coverage\(^ {102}\) and they should have right to safe and healthy working environment.\(^ {103}\) The Convention also contemplates that appropriate measures should be taken by the member country to avoid abusing practices in accordance with national laws and regulations.\(^ {104}\) Thus the Convention guarantees minimum labour protection to domestic workers on par with other categories of workers. By adopting this convention, step has to be taken to move towards the goal of decent work for all into the fold of International Labour Standards.

### 3.5.3.12 Decent Work for Domestic Workers Recommendation (No.201) of 2011

This recommendation is also adopted on 16\(^{th}\) June, 2011, by the International Labour Conference. The provisions of this Recommendation supplement the Domestic Workers Convention No. (189) and provides practical and useful guidance on how to give effect to the obligations embedded in the convention. It also recommends that when regulating the working and living conditions of domestic workers special attention should be given to the needs of the domestic workers who are under the age of 18 and above the

\(^{101}\) Article 7 of the decent work for domestic workers convention (no. 189).

\(^{102}\) Ibid., at Article 11

\(^{103}\) Ibid., at Article 13.

\(^{104}\) Ibid., at Article 14 and 15.
minimum age of employment as defined by national laws and regulations and take measures to protect them, including by strictly limiting their hours of work.\textsuperscript{105}

3.6 \textbf{UNITED NATIONS INSTRUMENTS AND HUMAN RIGHTS OF WOMEN}

While the United Nations does not deal with labour matters as such, and recognize the ILO as the specialized agency responsible for taking appropriate action for the accomplishment of the purposes set out in its Constitution, some UN instrument of more general scope have also covered labour matters.

A number of provisions concerning labour matters are contained in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which are legally binding human rights agreements. Both were adopted in 1966 and entered into force ten years later, making many of the provisions of the Universal Declaration of Human Rights effectively binding.

3.6.1 \textbf{The Convention on Elimination of all forms of Discrimination against Women, 1979}

The most important convention is the Convention on Elimination of all forms of Discrimination Against Women, 1979 (CEDAW) adopted in 1979 at Beijing, which has been ratified by India, also recognized the right of women to equality at the workplace and it states that women shall not be subjected to sexual harassment at the workplace, as such harassment vitiates the

\textsuperscript{105} Recommendation-5 of the Recommendation Concerning Decent Work for Domestic Workers No.(201).
working environment. Convention on Elimination of all forms of Discrimination Against Women states that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

It provides that the states parties should embody the principle of equality of men and women in their national constitutions and to ensure, through law and other appropriate means, the practical realization of this principle.

It also emphasis that state parties shall take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure on a basis of equality of men and women, the same rights, in particular:

- The right to work as an inalienable right of all human beings;
- The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
• The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

• The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.\textsuperscript{106}

### 3.6.2 Human Rights of Women

The development of international human rights law generally has been partial and andocentric, privileging a masculine world view. Non-governmental organisations have recently begun to document abuse of women that falls within the traditional scope of human rights. But the very structure of this law has been built on the silence of women. The fundamental problem that women face worldwide is discriminatory treatment compared with men, although this is a manifestation of the larger problem. Women are in an inferior position because they have no real power in either public or private worlds, and international human rights law, like most economic, social, cultural, and legal constructs, reinforces this powerlessness. As Noreen Burrows writes: “For most women, what it is to be human is to work long hours in agriculture or the home, to receive or no remuneration, and to be faced with political and legal process which ignore their contribution to society and accord no recognition of their particular needs.”\textsuperscript{107}

\textsuperscript{106} Article 11 of Convention of the Elimination of All Forms of Discrimination Against Women.

The Universal declaration of human rights had affirmed the principle of the inadmissibility of discrimination and proclaimed that all human beings are born free and equal in dignity. The declaration also provides for the right to security in the event of unemployment, sickness, disability, widow-hood, old age or other lack of livelihood in circumstances beyond his control. It also states that motherhood and childhood are entitled to special care and assistance.

3.7 IMPACT OF ILO ON INDIAN LABOUR LEGISLATIONS

The perusal of ILO Conventions conveys that since its creation in 1919, ILO has been tasked with establishing the labour standards as well as advocating for the progressing realisation of the right to social security. In order to implement those measures, the ILO took steps to formulate international standards. The changing nature of Indian Economy under the British Rule and the shift from laissez-faire policy to welfare state concepts with the establishment of ILO contributed for paying much greater attention to enact social security laws in India.

The extent of impact of ILO standards on the Indian Labour Legislations is very significant. Hence it is discussed as follows:

**Basic Human Rights**

To have a dignified life, there are certain basic rights needed for every human being like right to life, equality of treatment, non discrimination and equal opportunity. The feature of ILO Constitution makes it visible by providing conventions and

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109 Ibid., at Para 2.
recommendations for the basic human rights of workers recognised and assured in a large majority of the countries of the world.

**Right of Association (Agriculture) Convention 1921 (No.11)**

This Convention is to secure all the agricultural workers, right to associate and combine which are available to industrial workers. India has ratified this Convention in 1923. The Constitution of India assures freedom of association to all its citizens. But this right is subject to restrictions contemplated under clause (2) to (6) of Article 19. Similarly the Trade Unions Act of 1926 prohibits discrimination against union members and organisers in the formal and informal sectors, without distinction.

**Forced Labour**

India has ratified Conventions (No.29) of 1930 and (No.105) of 1957 concerning forced labour in the year 1954 and 2000 respectively. Forced labour is prohibited by the Indian Constitution and legislations. Article 23 of the Constitution prohibits forced labour not only in Government’s action but also enforced against private citizens, companies and associations. Similar provisions are also contained in Bonded Labour System (Abolition) Act, 1976 and Child Labour (Prohibition and Regulation) Act, 1986. The Bonded Labour Act also provides provision for the rehabilitation of freed bonded labour. The National Human Rights Commission set up in 1994 has targeted bonded labour for its abolition. Forced labour including of children in India is a major problem despite the existence of legislation providing for its prohibition.
Equal Remuneration Convention (No.100) of 1951

This convention is ratified by India in 1958. The convention guarantees equality before law and confers equal protection of law. Equality of women is necessary, not merely on the grounds of social justice but as a basic condition for economic, social and political development to the country. Accordingly constitution of India incorporated certain provisions which are to protect interest of women. Apart from that its policy towards securing equal pay for equal work for both men and women. In order to give effect to exercise the rights of women on an equal footing to men, the Equal remuneration act, 1976 was enacted to provide for the payment of equal remuneration to men and women and also for the prevention of discrimination on the ground of sex against women in the matter of employment.

Discrimination (Employment and Occupation) Convention (No.111) of 1958

This Convention is ratified by India in 1960. In India part III of the Constitution prohibits all kinds of discrimination on the basis of race, colour, sex, religion. The Directive Principles of State policy under Part IV of the Constitution of India also aimed at assuring social justice to all without discrimination. Almost all the labour laws enacted in furtherance of fundamental rights and directive principles are based on non discrimination and social justice. However, certain additional benefits are given to women in order to protect them from certain contingencies which are not connected to adult male workers such as maternity protection,

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110 Articles 14, 15 and 16 of the Constitution of India.
111 Article 39(d) of the Constitution of India.
112 Articles 14, 15, 16, 17 & 18 of the Constitution of India.
prohibition of night work and underground work etc. This is the protective discrimination in order to bring equality in matters of employment benefits among adult males and females. It has been estimated that most of the women in informal sector are working as agricultural labourers, in tea plantations, construction industries and in home based occupations. It is a fact that women constitute only a small minority of the formal work force which is an indication of the level of discrimination in the labour market and the lack of opportunities to enter into formal work. Despite the existence of the Equal Remuneration Act, 1976, virtually no where equal wages are paid to women for the same work performed by men. However efforts are taken by the Government for its effective implementation.

Apart from that, India has also ratified the conventions namely, Convention (No.18) Workmen’s Compensation (Occupational Diseases) 1925; Convention (No.19) concerning Equality of Treatment (Accident Compensation) 1925; Convention (No.42) Workmen’s Compensation (Occupational Diseases) (Revised), 1934; Convention (No.118) Equality of Treatment (Social Security) 1962.

Although Indian response in terms of ratification of ILO conventions to social security has been poor nevertheless India has made every attempt to provide for many of the obligations contemplated in ILO conventions and enacted social security legislations. India has not ratified Conventions such as Workmen’s Compensation (Accidents) Convention (No.17), 1925; The Sickness Insurance (Industry) Convention (No.24), 1927; The Old Age Insurance (Industry) Convention (No.35), 1933; Maternity Protection Convention (No.183), 2000 etc., but it has taken sufficient attention by passing Acts such as Workmen’s Compensation Act presently Employees’ Compensation Act, Employees State Insurance Act,
Employees Provident Fund Miscellaneous Provisions Act, Maternity Benefit Act, to incorporate most of provisions contemplated by ILO to ensure social security.

To conclude, in the context of protection of human rights relating to the unorganised sector workers India has taken several measures by enacting and enforcing legislations viz., Minimum Wages Act, Bonded Labour System (Abolition) Act, Equal Remuneration Act etc. But, due to lack of organisation among the workers, there is absence of extension of statutory protection to unorganised labour resulting in victimisation and exploitation of employees along with the gross violation of human rights.