conventions and recommendations are implemented properly. It is watching carefully every step that is taken by the member states with regard to the application of its Conventions and Recommendations. This can be proved by the procedure prescribed for ratification of Conventions and Recommendations. The member states who wish to ratify the Conventions have to ratify them in toto and once the Convention is ratified by the member state, it is binding on the member State to adopt each and every provision of the Convention. If any provision of Convention is not implemented the International Labour Organization is required to be intimated the reasons for such failure with a reasonable time. And it also to be intimated when they will be implemented. This shows how carefully the International Labour Organisation guards the implementation of its Conventions and Recommendations. It can be assessed by its procedure for ratification of Conventions and Recommendations that the role of the International Labour Organisation is not merely advisory; it is more than that.

To a great extent the International Labour Organization has influenced the Indian Labour Policy and Legislation. As a matter of fact labour policy and labour legislation in almost all the countries are now generally based on the principles enunciated in the Labour Code of the organization.

THEORIES OF CONTRACT

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The Theories of Contract give an idea about the elements of the Law of Contract, the justification for protecting a particular interest of the contracting parties and the amount of protection that the law should provide to such interests. Different legal systems adhere to different theories depending upon the existing socio-economic conditions of the society.

The Theories of Contract represent the response of the society to the problems arising in the matter of enforcing of the society to the problems arising in the matter of enforcing the mutual obligations. The advantages or disadvantages of the contracting parties in the matter of their contractual obligations therefore depend upon the theories to which the legal system adheres. Following are some of the important theories of the Law of Contract.

In this article the Theories of Contract are discussed under the two broad heads of the theories applicable to Municipal Law and the theories applicable to International Law.

I. THEORIES OF CONTRACT RELATING TO MUNICIPAL LAW:

(1) Theory of an Equivalent: In the seventeenth century the problems before the Law of Contract were as to which transaction should be recognized as worthy of protection: whether a bare promise was sufficient to create obligations between the contracting parties? Was it necessary that something should be exchanged for the promise? Whether a document should be executed in a particular form? Two theories arose during this period, one was the theory of an equivalent, and the other was the theory of inherent moral force.

According to the first theory, an abstract promise, no equivalent having been given for it, is not legally binding. Three reasons were given for this. One was that one who trusts another who makes a promise form equivalent does so rashly. He cannot ask to be secured in an unfounded expectation. The second reason was that if one promises without an equivalent, he does so more from 'ostentation' than from real intention, but an equivalent can show that the person acted from a calculation, and deliberation. It is only deliberate promises which are binding. The third reason was that one who parts with an equivalent in exchange for a promise or relying on a promise is injured in his interest if the promise is not kept.

The early Law of Contract in England was very much influenced by this theory. Owing to its impact on the legal theory, four types of promises were considered legally enforceable at Common Law in the 17th Century. They were (1) a formal acknowledgement of indebtedness by bond under seal often conditioned upon performance of a promise for which it was a security. (2) a covenant or undertaking under seal; (3) a Contract of debt, and (4) a simple Contract upon consideration which is in exchange for an act or for another promise.

*(2) The Theory of inherent moral force***:** The theory of inherent moral force was generally adopted by the continental writers of the eighteenth century who laid the foundation of the rule that a promise relating to a legal transaction created a legal obligation. This theory was propounded by Grotious. Lord *Mansfield* came very near establishing it in English Law by his doctrine that no promise made as a business transaction could be *'nudum pactum'*. But the development of the nineteenth century arrested its further growth and influence.

(3) *Fichte's theory :* While the 17th Century sought to rest the rights of persons upon Contract, and the 18th century rested contract on the inherent moral force of a promise, the 19th century rested contract on property. *Fichte* said that the duty of performing an agreement arises when one party thereto begins to act under it. IN case a promise was performed on one side, the person who performed the promise might claim restitution *quasi ex contractu* or a claim for counter-performance *ex contractu*. Inspired by this theory, English Equity carved many exceptions to the equivalent theory of Contract and provided a good number of remedies to the contracting parties.

(4) *The Will theory:* In the nineteenth century, French writers evolved a highly individualistic conception of contract. These writers regarded the parties having the power and the unrestricted freedom to make a law which was to govern their relationship. This kind of approach was the product of the political liberalism of the 18th century. And in England it had its impact on the economic liberalism of the 19th century.

The individual approach to contracts was a recognition of the individual autonomy of the contracting parties. The implication of this theory was the assertion that a Contract represented the binding nature of the promise which had been voluntarily made by the parties concerned. The crucial element in contract, according to this theory, was the creative element. Based on this theory the Law of Contract regarded the mutual exchange of promises as sufficient to create a binding obligation.

This theory shaped the law in a crucial period of its development. It drew attention to an important element in modern law of contract, that is, the binding nature of mutual promises.

(5) *The Theory of Freedom of Contract:* According to this theory justice requires that each individual is at liberty to make free use of his natural powers in bargains, exchanges and promises except when he interferes with a like freedom of his fellow men. This theory

had its tremendous impact on the Common Law of England. It was given full play in the 19th century on the ground that the parties were the best judges of their interests and if they freely and voluntarily entered into a contract the only function of the Court was to enforce it. It was considered immaterial that one party was economically in a stronger bargaining position than the other. If a party introduced qualifications and exceptions to his liability in clauses such as, for example, "exemption clauses: and the other party accepted them, full effect was to be given to what the parties had agreed.

When the Common Law Judges went to the extent of recognizing absolute freedom of contract, the disadvantages of this theory were noticed. Equity reacted to the theory of absolute freedom, and interfered in many cases of harsh and unconscionable bargains, such as, penalties, forfeitures and mortgages. This it did on the ground that it was contrary to 'good conscience" to take undue advantage of the poor and the needy and cause hardship to them in such bargains.

(6) *Reliance based theory:* This theory was based on the notion that an obligation results from the effect of reliance on the word of a person. Support to this theory came from the practices of the business people and the legal doctrines that the important factor in Law of Contract is not the promise but the effect of reliance on it. A promise remains important in providing evidence of what has been undertaken but it is not the source of obligation.

(7) *Collective Theory of Contract:* According to this theory the essence of Contract is the reasonable expectation or legitimate expectation. It recognizes that a promise is not the only means of creating expectation. In many circumstances society will regard one party's expectation as reasonably held and so deserving of protection irrespective of the belief of the other party. So, some expectation will be created by promise, some by reliance, some by other means including perhaps the protection of certain classes within the society and 'fairness'.

II. Theories of Contract relating to International Law

(1) *Pacta Sunt Servanda*: (Agreements are to be kept): This is in abbreviated form of the rules stated in the famous Justinians's Code, which is one of the fundamental mental source of Roman Law; it is an expression of the principle that undertakings and contracts must be observed and implemented. According to this principle, the parties are bound by what they have mutually agreed upon this principle signifies the sanctity of contracts. From Roman Law, the principle has been incorporated in International Law. The rationale behind the incorporation of this principle is: natural justice demands that if states take over certain obligations they must perform them; good faith must be the basis of the international relations.

In 1958, the International Law Association resolved that "International Law recognizes that the principle: Pacta Sunt Servanda applies to specific engagements by States towards other States to towards the nationals of other States and that, in consequences, taking of private property in violation of a specific State-contract is contrary to International Law.

The principle of Pacta now is a fundamental principle of the Law of Treaties. Article 26 of the Vienna Convention of Law of Treaties 1969 says, 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

(2) The Doctrine of international Public Policy: (Jus Cogens) : Most municipal system of law contain rule based upon notions of public policy that certain acts are invalidated by a failure to conform to the underlying principles upon which the legal order is based.

The concept of Jus Cogens has been accepted by the International Law. The Vienna

convention on Law of Treaties, 1969 says, "a treaty is void if it conflicts with a peremptory norm of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general International Law having the same character.'

(3) The theory of diplomatic immunity: People of all nations have from ancient time recognized the status of diplomatic agents as deserving of certain privileges and immunities. The purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing their State. Article 31 of the Vienna Convention on Diplomatic Immunities, 1961 says, "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction.

In accordance with the rule laid down in the Vienna Convention States parties to the convention have enacted a rule in their respective Codes of Civil Procedure to the effect that the national Courts would not allow a suit to be instituted against a foreign mission without the permission of the Local Government.

In India, permission of the Central Government has to be obtained before a suit is filed against a foreign embassy. Section 86(1) of the Code of Civil Procedure, 1908 says, "No foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by the Secretary or that Government.

The immunity granted to the foreign State and its diplomatic mission may cause hardship to person who have a grievance against the foreign State either on account of a breach of contract or an account of a civil wrong. It may create impediments in the redressal of grievance of an employee working in a foreign country under a contract of employment.

(4) The rule of National Treatment: The Negotiators of Commercial treaties often seek to obtain special privileges but the modern trend today is to provide for equality of opportunity. Nations agree to provide to the aliens the rights of residence, acquisition of property, and access to Courts on part with the national of the contracting State. This kind of equality which is ought to be established between the aliens and the nationals is known as 'National Treatment'.

In the treaties of 1778 the United States and France reciprocally accorded to each other's nationals national treatment' with regard to property, taxes and inheritance.

(5) The Most Favoured - National clause: In commercial treaties, clause is sometimes included to the effect that each party must grant to the other all benefits which either has granted in the past, or will grant in future, to any third State, *i.e.,* treat the other party equally with the nation most-favoured by any other treaty, past or future.

Most favoured national clauses appear in three forms: (1) conditional, (2) unconditional, and (3) general.

The conditional form may be illustrated by Article 2 of the Treaty of 1778 between the United States and France, whereby the High Contracting Parties mutually agreed not to grant any particular favour to other nations in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same favour, freely, if the conession was freely made or on allowing the same compensation if the concession was conditional. The unconditional form of the most-favoured nation clause may be illustrated by Article 7 to the treaty between the United States and Germany of 1923. It provides that "each of the High Contracting Parties binds itself unconditionally to impose no prohibition on

the importation of any article (that is) the growth, produce of manufacture, of any foreign country". Under this clause each party is bound to give to the other party commercial advantages it may give to a third State, whether by legislation or treaty. Such a clause precludes special reciprocity treaties.

The general form of the most-favoured-nation clause is illustrated by Article 8 of the treaty between the United States and Switezerland of 1850. "In all that relates to the importation, exportation and transit of their respective products, the United States of America and the Swiss Constitutions shall treat each other, reciprocally, as most-favoured-nation, union of nations, State or society."

REMEDIES IN CONTRACTUAL SERVICE

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The subject of remedies in contractual service covers a large number of important matters such as those pertaining to the specific kinds of remedies, the institutions where the remedies maybe resorted to and the principles according to which the Courts would grant the remedies. During the formative periods of Common Law the remedy provided under a Contract of Service was one of Damages only. This remedy was granted by the Courts afterwards in respect of other kinds of contracts also. But the rigidity of Common Law was such that the Judges found it difficult to invent any new kind of remedy. The Courts of Equity however expanded the scope of contractual remedies by providing new kinds of remedies first in the sphere of mercantile contracts then in the sphere of certain other relations which were based upon contracts.

This article has the object of discussing the two kinds of remedies in contractual service which were granted by the Courts of Common Law and Equity and which even today are granted by the Courts under the Statute in our country.

I. Remedy of Damages: Damages are the pecuniary compensation payable by one person to another for injury, loss or damage caused by the one to the other by breach of legal duty, normally by breach of contract. They are distinguished into general damages, *i.e.,* compensation for the loss presumed to flow from a breach of contract, and special damages, *i.e,* compensation for particular losses not presumed but which in fact have followed in particular case; the latter must be specially claimed and strictly proved. Damages are also classified as liquidated and unliquidated damages. Liquidated damages are agreed on by the parties as payable in the event of breach of duty by the party in breach. Damages are called unliquidated when they are unascertained, until they are fixed by the judgment of the Court. The underlying principle of damages is restitution, *i.e.,* to restore, so far as money can do, the plaintiff to the position he would have been in if the contract with him had been duly implemented. In a few cases exemplary or punitive damages are awarded not merely to compensate the plaintiff but to punish the defendant because of the outrageous nature of his conduct.

In the case of vitiating elements present in the transaction the remedy of damages can be claimed at Common Law where the defendant is under a duty to exercise