

CORPORATE SOCIAL CONTRACT

Ivin George¹

Abstract

The theory of Social Contract tries to answer the fundamental question of political obligation. Political philosophers since medieval times have tried to find a source of the political obligation of an individual in the society. The Social Contract Theory is one such attempt to answer the question of political obligation. It states that the political obligation of an individual stems from a contract with the state according to which man agrees to live in the state following certain rules and the state in turn keeps the man safe. In this paper, an attempt has been made to analyze the application of this theory to India, where, unlike in European countries this theory has not been applied. Various eras of Indian history have been analyzed and an application of the Social contract theory has been made. During the course of the research it was found that the social contract has been renewed every time the state changed its form, from being a monarchy in the ancient times to being a democracy. Every renewal was preceded by a revolt or a revolution which begins by the presence of anger in the masses for their rulers. Through the social power that has been given to the state to rule over the masses, it was found that in every era there is a balance of power between the ruler and the common public and this balance is in the favor of either the sovereign or the public. An attempt has been made to identify where this power actually lies in the different eras. Lastly, the theory has been applied to the current scenario and the competence of the present social contract in place has been judged. After careful analysis, a need for a new social contract has been suggested. It has also been suggested that the drafting of a social contract where the state functions as a body corporate is a novel approach. Taking the example of a private bank and a nationalized bank, it is a well known fact that the private banks are much more efficient than the public banks and the customer satisfaction is also high. Similarly the state or the government is a body corporate and we the masses are the consumers thus there is a need for a better corporate social contract to have a more efficient state.

¹Student

Introduction

The theory of social contract tries to answer the fundamental question of political obligation. Political philosophers since medieval times have tried to find a source of the political obligation of an individual in the society. Political obligation means the obligation an individual has, to obey the laws of the state one lives in and to function according to them. The question which has troubled philosophers throughout the ages is the source of this political obligation and how one acquires it.² T.H. Green defines political obligation as “...term to include both the obligation of the subject towards the sovereign, of the citizen towards the state and the obligations of individuals to each other as enforced by a political superior.”³

There have been several attempts to answer the question of political obligation. The oldest of the theory states that all the rulers exercise their power due to the divine right given to them by God, also known as the divine rights theory, it states that the king is the representative of God on earth and the subjects have to obey the king because of this. This theory was very ambiguous as the existence of God itself is a debatable topic

In this paper, we are primarily concerned with the Theory of Social Contract, which states that the political obligation of individual stems from a contract with the state according to which man agrees to live in the state following certain rules and the state, in turn, keeps the man safe. Thomas Hobbes and John Locke are the two eminent philosophers who have used this theory to answer the question of political obligation. They both described the state of nature of man as that of chaos and uncertainty, and it is to escape from this chaos man formed a covenant to obey a sovereign power that will have the authority to make, enforce, and interpret laws.⁴

In the state of nature man was a nomad, he traveled from one place to another in search of food, as man progressed, he shifted to agriculture and settled down, he felt a need to live in close clusters to protect himself and his crops from wild animals and nature. So there two contracts made between the individuals, first, between the individuals who agreed to not

²Dagger, Richard and Lefkowitz, David, "Political Obligation", *The Stanford Encyclopedia of Philosophy* (Fall 2014 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/fall2014/entries/political-obligation/>>.

³T.H. Green, *Lectures on the Principles of Political Obligation* 5(Paul Harris,1999)

⁴Dagger, *Supra*, 1.

harm each other and live alongside each other and a second contract by which they agreed to give up certain rights to the state and authorized it to make laws for them.

The theory of social contract is particularly relevant in this age because almost all the states and their government do indeed derive their power from a written contract. This contract has been called by various names such as a Constitution in India, The Declaration of Rights in the United States of America or the Magna Carta in Great Britain.

This research paper provides two additions to the theory of social contract, firstly, it states that the social contract much like any other has been periodically renewed throughout the ages, and hence is dynamic in nature; each renewal of social contract was preceded by a period of chaos and then subsequently followed by a change in the form of governance, for example, the characteristics of the state changed from being a police state to a welfare state, monarchy to democracy and so on. Secondly, it states that in every social contract the state derived its power from the subjects and they were the real source of power but with the passage of time this power shifted from the subject to the state this led to the corruption of the contract and tyranny of the rulers, which ultimately led to the renewal of social contract, this renewal of social contract in the Indian history has been studied in this research paper.

Social Contract And Indian History

The Indian historical timeline begins with the advent of the Indus Valley civilization, in the Bronze Age, in 3300 BC⁵ and has continued till date. Thus in this research paper the Indian history has been divided into 4 periods, which are:

1. The Ancient or the Vedic Period (3300 BC-12 Century AD),
2. The Medieval or the Indo-Islamic Period (1200 - 1700),
3. Pre independence Period (1700 -1947),
4. Post Independent period (1947 - Till Date),

The Ancient Or The Vedic Period (3300 BC-12 Century AD)

The origin of Indian civilization happened with a shift in the nature of man in the early ages, till now man had been a wanderer or a nomad, he went from one place to another in search of

⁵Jonathan Mark Kenoyer, Ancient Cities of the Indus Valley Civilization(Oxford University Press, Karachi/American Institute of Pakistan Studies 260 pgs., 1998).

food, then for some reason man shifted to a more settled lifestyle and started living in tribes mostly along riverbanks or estuaries due to the abundance of fertile soil.

Now when this happened, the people settled into small kingdoms. The nature of the kingdoms and how they came to be can be understood by a passage in the Autrey Brahmana, which is a definite indication of the manner in which the State was formed and monarchy accepted as the form of Government. "The Devas and the Asuras were fighting...the Asuras defeated the Devas... The Devas said 'It is on account of our having no chief (Arajataya) that the Asuras defeat us. Let us create a Rajan.' All agreed. Kingship resulted."⁶

From the above passage of the Rig Veda it is clear that the earliest political setup in India was a popular one, that is, the masses agreed that they were in need of better governance and they needed one man to become the ruler for better organization and their survival. Thus the theory of social contract that the state came into being because of the consent of the subjects holds true in ancient India also. The Rig Veda contained the ideals which the ruler had to keep in mind while carrying out his duties.

The King was chosen by the people. Election was the principle on which a leader or ruler was placed over the Jana. Proper advisors surrounded the person of the ruler. The people met in their assemblies on important occasions. Vox populi had a prominent part in all important decisions.⁷

This system however did not last long and kingship became hereditary as time and political thought progressed. The important thing to remember however is; the Indian civilization till this point is divided into very small states. With the passage of time, towards the beginning of the Mauryan Empire, as an immediate aftermath of Alexander's invasion and due to growth of political thought the need for bigger kingdoms and empires was felt.

The character of sovereignty in the new epochs," the Arthasastra and the nitisastras show that the popular character was not perhaps constitutionally kept up as in the Vedic Age."⁸ This shows that as time progressed the social contract changed with time, where the initially the king was elected the kingship became hereditary, the society was divided into various classes and the society became class dominated. Thus the seat of power shifted from the subject to

⁶C. I Philip, *State And Individual In Ancient Indian Political Thought*, Vol. 11, *IJPS*, Page 19, 21(1950)

⁷*I.d*

⁸*I.d*

the state, this shift in power was accompanied by the tyranny of the rulers, who had assumed the title of being God's Representative on earth.

Earlier the rulers had to respect the traditions and customs of the people as laid down in the Sastras or as advised by popular views and the well-considered opinion of the experts. The main purpose of the state was to provide proper law and order. The aims and purpose of the state has been emphasized in the saptanga.

Oppressive rulers were to be removed from power, deposed or killed, in case they became tyrants and intrigued against the state. When a king begins to oppress he ceases to be divine. No one was to support such a ruler - not even the army. That is how the last Maurya King and the last Sunga King were deposed with the intervention of the army.⁹

Thus it can be inferred that as the power shifted from the subject to the state, the social contract was corrupted. This was recognized in ancient India. As the ruler became oppressive and lost the confidence of the masses there was a revolt from the masses which led to the downfall of the kingdoms and the social contract was renewed.

The Medieval Or The Indo-Islamic Period (1200 - 1700)

Towards the start of the 12th century, medieval India was divided into small kingdoms which were in constant war with each other which led to invasions from the north by Muslim rulers who conquered India and ushered in the age of Muslim rule in India. The Muslim aggression however had begun centuries earlier but the Indian rulers had been successful in resisting it. India's centuries-long resistance to Muslim aggression began in 636 C.E.¹⁰

The Muslim rulers followed the Islamic political thought which is based on the premise that sovereignty belongs to God, and the Islamic State is in fact a viceregency, with no right to exercise authority except in subordination to God.¹¹ Though this political thought may seem to have agreed with the theory of divine right, but that is not entirely true. Sharia, which included the law enunciated in the Quran and the Sunnah, (the practice of the Prophet), was considered the supreme law of the state. Everyone including the head of the state was required to act in accordance with the Sharia law.

⁹Supra note 5

¹⁰Janet Levy, *The Muslim Conquest of India*, (12th feb : 12:12 pm)https://www.americanthinker.com/articles/2014/02/the_muslim_conquest_of_india.html

¹¹Thanveer T, *Theory And Application Of Islamic Political Thought In India With Special Reference To The Tajdīd OF Shah Wali Allah Dehlavi*, ICASIC, 14th March 2016, pg 13

The head of the state did not hold his power because of any divine connection, he was appointed after mutual consultation among Muslims and with their concurrence.¹² The administration was carried out in consultation with them and legislation was done within the limits prescribed by the sharia. It was the right also the duty, of every member of the Muslim community to check the occurrence of things that are wrong and abhorrent to the Islamic sharia, this included a check on the ruler as it has been written in the sharia that no one has the right to command obedience in the service of sin.¹³

Thus, even though the Muslim political thought derived itself from religious sources it has characteristics of social contract present in it. The head of the state was elected by the community and he had to act in accordance with the sharia, which the community had accepted as their law. All the elements of social contract are hence present in the Islamic political thought. Elected head of the state showed the consent of the people, the sharia was the law the people agreed to follow and the king was also governed by the sharia. Thus it can be said a different social contract which had religious roots had been adapted by the Muslim community and that was being applied to India by the conquerors.

Under this religious social contract the power initially lied with the masses as they had the power to elect the ruler and to make sure that he carried out his functions in accordance with the sharia, this however changed with the passage of time. As the state grew the power of the community over the ruler was diluted, the ruler now held the power over the subjects but as soon as the ruler grew incompetent and tyrannical, he was over thrown by another ruler, this carried on for centuries and India saw the rise and fall of many dynasties.

In India however the rulers faced a new problem, majority of the subjects were now Hindus and Buddhist, the Islamic political thought was divided on the issue of governance of non Muslim and their inclusion in the state affairs, many rulers followed the path of tolerance and decided that they treated as People of the Book and protected as minorities, and declared that the non Muslims were free to maintain their religious practices as long as they pay taxes to the state.¹⁴

¹² Supra note 9

¹³ Thanveer T, Theory And Application Of Islamic Political Thought In India With Special Reference To The Tadjīd OF Shah Wali Allah Dehlavi, ICASIC, 14th March 2016, pg 14

¹⁴ Thanveer T, Theory And Application Of Islamic Political Thought In India With Special Reference To The Tadjīd OF Shah Wali Allah Dehlavi, ICASIC, 14th March 2016, pg 14

A few however followed the ideology of the Muslim political thinker Ziya' al Din Barani(1285-1357). According to Barani a good ruler cannot be content with levying poll-tax (jizya) and land revenue (kharaj) on non-Muslims, rather he has to work hard for the supremacy of Islam. Barani permits the appointment of non-Muslims in state service on grounds of necessity.¹⁵

Pre Independence Period (1700 -1947)

Towards the end of the 18th century the political condition of Mughal India was pathetic. The period was characterized by political instability and insecurity. Looting and pillage, violence and conflicts were prevalent everywhere. The stable and united Mughal Empire had been shaken towards the end of the long reign of Emperor Aurangzeb, but the emperor's firmness and determination prevented any serious violation of law and order and the situation was kept under control.¹⁶ With the death of Aurangzeb the decline of the Mughal dynasty was initiated, the other rulers were not competent enough to rule over Indian sub-continent.

From the early 1700 to 1857 taking advantage of the weak political integrity of India, an English trading company known as the British East India Company rose to power with its business tactics, they formed relations with almost all the rulers and in affect took over the nation, the company went to war against the ruler of Bengal, Siraj ud-Daullah in 1757, known as the battle of Plassey, which kick started their political domination over India.

This rule of the British East India Company was oppressive and the company did very little for the benefit of the people. There was no social contract in this time, the company was not ruling over India they had come here from Britain to conduct business and make profits. The company was not concerned about the people of India, thus the seat of power lay entirely with Company, and in 1857 a revolt broke out, also known as the First War of Independence of India.

The immediate aftermath of the revolt of 1857 was the passing of the Government of India Act 1858. The Government of India Act, 1858 transferred the Government, territories and

¹⁵ThanveerT,Theory And Application Of Islamic Political Thought In India With Special Reference To The Tajdīd OF Shah Wali Allah Dehlavi, ICASIC, 14th March 2016, pg 15

¹⁶Rizvi S.A.A, Shah Wali Allah and his Times, p 6 (1980)

revenues of India from the East India Company to the British Crown. Thus India came under the direct rule of the 'British Crown'.¹⁷

Most historians of Indian nationalism have argued that the Indian political nation, in a modern sense of the term, did not exist prior to the establishment of British rule.¹⁸ It was under the British Rule that the entire Indian Sub-continent was under a singular banner and with the introduction of western education and English, for the first time a sense of nationalism was felt among Indians.

The people of India were not satisfied with the British rule and after the Revolt of 1857, the people took a new approach towards the British rule. The people came together and formed several organizations to discuss political grievances, this ultimately led to the formation of the Indian National Congress in 1885.

With the efforts of Indian National Congress the Government of India Acts of 1919 and 1935 were passed by the British Parliament,¹⁹ but none of the acts were satisfactory to the Indian Public, because the people of India were given little to none power under any of the acts and the state was all powerful. After continued efforts of the Indian National Congress under the leadership of Mahatma Gandhi, India attained freedom from the British rule in 1947.

Thus it can be seen how from 1857 till 1947 there was constant renewal of the social contract of the nation. There were several attempts made by the British Parliament to draft favorable Social contracts (The Government of India Acts), but all of them failed because all of the contracts had the balance of power in favor of the British Government.

Post Independent Period (1947 - Till Date)

After nearly a century of struggle against the colonial rulers India gained Independence from the British Empire on 15th August 1947. The Indian Independence Act 1947 was introduced on 4th July to the parliament and it provided for the establishment of two nations India and Pakistan.²⁰

¹⁷Government of India Act, 1858, Some Important Constitutional Developments during the Colonial period (14th Feb 2018) <http://vle.du.ac.in/mod/book/view.php?id=10252&chapterid=17115>

¹⁸Sekhar Bandyopadhyay, From Plassey to Partition: A History of Modern India, pg 186 (2006)

¹⁹Government of India Acts, Encyclopedia Britannica (14thfeb 2018)
<https://www.britannica.com/event/Government-of-India-Acts>

²⁰Shubhangi R, notes on Indian independence Act 1947 (14thfeb 2018)

<http://www.politicalsciencenotes.com/articles/notes-on-indian-independence-act-of-1947/896>

After the independence the people of India were free to choose their form of government. It can be stated that for a few time after the independence people in India had been restored to their state of nature. The citizens of India came together and on 26th January 1950 gave itself a constitution. This was the new social contract which the people of this nation had drafted for itself.

The Drafting committee for the constitution of India was chaired by Dr.Bhim Rao Ambedkar, who was persuaded by the leaders of the Indian National Congress at the suggestion of Mahatma Gandhi to accept the Chairmanship of the Drafting Committee of the Constituent Assembly.²¹

The committee after numerous parliamentary debates submitted the Indian constitution on 26th November 1949. The nature of the constitution of India can be determined by the Preamble to the Constitution. The preamble reads as follows:

“ WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”²²

By this Constitution the citizens of India gave themselves a democratic socialist nation. The social contract had changed from a monarchy to a democracy, under this new social contract the masses governed themselves by being a democracy everyone who was eligible to stand for elections could be the part of the law making body of the nation. The caste system was abolished and the concept of equality was adapted by the constitution. Every individual was

²¹K. H. Cheluva Raju, Dr. B. R. Ambedkar And Making Of The Constitution: A Case Study Of Indian Federalism, Vol 52, TIJPS, pp 153, 153 (1991)

²² The Constitution of India, Preamble, 1950.

guaranteed certain fundamental rights, enshrined in part III of the Constitution.²³ Other than this justice and liberty has been guaranteed to all the law abiding citizens of the nation.

Under this Constitution the power was restored back to the citizens of the state and the state now completely derived its power from the citizens. This Constitution is however not static it has been amended time and again by the parliament to update outdated laws and to add new laws. This has become necessary with passage of time. There have been around 101 amendments to the Constitution of India.

Conclusion

After a close study of the history of political thought throughout Indian history it can be safely concluded that the theory of social contract finds its application at every age. It can also be successfully concluded that the social contract has been renewed time and again by the citizens of the nation with passage of time. Whenever the power shifted from the masses to ruler there has been a change in the leadership of the state and the social contract has been renewed. It was stated in the Vedic age that oppressive rulers were to be removed from power, deposed or killed, in case they became tyrants and intrigued against the state.²⁴

Initially the Constitution provided that the source of power for the state legislature was to be the citizens of India, so far in history the citizens had experienced the tyranny of their rulers and were aware of the drawbacks of monarchy, thus they choose democracy. But with the passage of time even democracy has not been able to give prosperity and peace to our communally divided country.

It is not uncommon for the various political parties to involve themselves in communal politics to gather majority votes for election. The country has been divided among communal lines and progress has been limited. In this age of democracy, the citizens have been constantly fooled by the political parties who show them dreams of a better nation only to disappear after the elections and reappear on the next election with similar promises.

Thus, there is a need for the renewal of the social contract yet again. Under this renewed contract the following should be considered; the state should act as a body corporate with an objective of management of the nation. The state is a service provider; it provides

²³ The Constitution of India, Articles 14-32, 1950.

²⁴ Supra Note 5

infrastructure, security and order in the society. We the citizens pay for this service by paying taxes. Thus, the state should take up corporate mannerisms for efficiency.

The practice of setting targets must be introduced, all the promises made by the election candidate in his election campaign should be made his target and at the end of his term must be assessed to check whether he achieved his target, if not he should not be allowed to contest again.

It has been observed in the past that at the time of parliamentary elections so much emphasis has been given to the political party and the prime ministerial candidates that more often than not the other members of the parliament go unnoticed and many undeserving candidates get elected. Thus, party system should be done away with and individuals should contest elections independently. This would ensure that every individual has a vision for the nation and it would allow the citizens to make a better choice. It ensures a smoother functioning of the parliament as it would not be divided among parties, it had been seen in the recent times that the minority parties often hinder the proceedings of the parliament; this is against the interest of the nation.

The use of religion to sway people into voting for them should be forbidden, India is a secular state the promotion of any particular religion is not the state's job, all the laws and policies should be formulated keeping in mind the general public irrespective of the religion.

Decorum inside the parliament should also be enforced, much like in a class room certain decorum should be introduced in the parliament, many members of the parliament have been found sleeping inside the parliament when discussion is being carried on.