

PRAY WHAT IS A SOCIAL CONTRACT

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Eversince the time of its introduction as part of her election manifesto by Mrs. Benazir Bhutto, the idea of a "New Social Contract" has engaged the attention of some celebrated Authors who have made meticulous attempts to explain what exactly was intended to be conveyed by this expression. Irrespective of their erudite interpretations, however, the matter is as obscure and as much in need of an elucidation as it was in its inception. There is not the least intention of derogating anything from the efficacy of their competent discourses and I must confess, in all fairness, that it may be due largely to my own limitations. I have a feeling that more have been the efforts to get at its connotation; the more complex has it become. So an attempt is being made here against, to explain, as far as possible what exactly is meant by the phrase "New Social Contract".

2. In his article "Towards understanding the understandable", Mr. S. K. Mahmood who happens to be the Chairman of Prime Minister's Inspection Team and a Member of the Task Force, expressed himself as follows:

"The term 'Social Contract' has caused confusion as it lends itself to a number of interpretations. Political scientists of course immediately rush to Hobbes, Locke and Rousseau to understand the implications of this expression in relation to the obtaining realities in Pakistan. Others argue that she is advocating the case for drafting a new Constitution for the country. There is hardly any substance in these expositions. Intellectual evolution since the days of the 'Contractualists' has progressed and democratic principles have become the basis on which governments rest. In fact, the current debate in the Western industrialized democracies is whether they are operating an elitist or pluralist democracy; the dominant view of course favours the latter. It is, therefore, ridiculous to think that Ms. Bhutto is taking us back to the Contractualists' era, whereas we are living in a post cold war global setting wherein human rights, free market economies, democracy etc are the values or catch words".

3. Those who, according to learned Author, think we are being taken back to the contractualists era, might have escaped my notice and I am obviously not in a position to say anything about the soundness or otherwise of their opinion. Anyway it seems to me that reference to thinkers like Hobbes, Locke and Rousseau, has been made only to take in the implications of the expression. They are not relevant for explanation of what is going to be the promised 'New Social Contract'. As for instance, in his article "New Social Contract", Mr. Rashid Rahman of Daily Nation, appears to have had recourse to the exponents of this political theory for discovering the origin of contractual situations. He said that they insisted "that human society originated in a contract impact, or agreement explicit or implied, to which each individual consented and so removed himself from "a state of nature", which helped set in motion a regime of government under laws, of impartially administered justice and of civil morality.

4. Philosophical approach aside, the expression signifies three concepts. But the bottom line is provided by the word "Contract". It is qualified in reverse order by the words 'Social' and 'New', which of course arrest the scope of its generality and impart special connotation to it. Although the term 'Social Contract' gives us a different conceptual situation, in essence and basically it remains a contract. The prefixation of the word 'New' signifies that the Social Contract in contemplation is going to be different from the one in vogue.

5. As the Statute would have us understand, a contract is an agreement enforceable by law. An agreement requires the involvement of at least two persons. One of them signifies to the other, his willingness to do or abstain from doing anything with a view to obtaining assent of that other to such act or abstinence. In legal parlance, this act of signifying is called a proposal. The acceptance of this proposal by the other person gives it the status and character of a promise to do or abstain from doing of that particular thing. The person making the proposal is called the promisor whereas the one who accepts it, goes by the designation of a promisee.

6. There can possibly be no such promise without a consideration. When, at the desire of the promisor, the promisee or any other person, has either done or abstained from doing, or does or abstains from doing or

even promises to do or abstains from doing something, such act or abstinence or promise is called a consideration for the promise. Every promise and every set of promises forming consideration for each other, is an agreement.

7. The law provides that all agreements are contracts, if they are made by the free consent of the parties, competent to contract. But it is subject to three conditions: First, the consideration has to be lawful. Second, the object to be achieved by the agreement must also be lawful. The third is that any such agreement has not been declared as void or illegal. As for competence to contract, the person intending to be a party must be of sound mind and of the age of majority in accordance with the law to which he is subject and not under any disqualification from contracting by any law of the land.

8. As we have seen, a contract would thus require the involvement of at least two competent persons, who of their free will mutually come to an agreement for doing or abstaining from doing something. Element of mutuality and reciprocity is the essence of a contract. When complete, it obliges the contracting parties to a particular course of conduct and then governs their relationship with regard to a particular matter or transaction. These contracts are enforceable by the courts. The only proviso is that they do not offend against those who are not parties to them. In other words, they do not militate against any law for the time being in force.

9. In the context of these considerations, Social Contract is an agreement, pertaining not only to two persons, but to a society or community as a whole, and is arrived at by its competent members in exercise of their free will and consent. It determines the nature, extent and character of their relationship with one another in respect of matters of mutual concern and then controls that relationship. It regulates their conduct in daily life and inter-alia serves as legal charter on how they have to run their affairs. In this view of the matter, all laws concerning primary education, basic health, nutrition, population planning, rural water supply, sanitation, agriculture, commerce, industry, production, social welfare etal, are the results of a Social Contract. You might say that they are themselves social contracts. By the same token, the Constitution which gives a system of government is also a social contract.

10. Like it is there in a legal contract between two persons, the element of coincidence of minds, reciprocity and free consent is also the ground norm of asocial contract. By lending such consent, they create certain rights and corresponding obligations for themselves. They give up a part of their inherent freedom, with the imposition of certain restrictions on their behaviour. This surrender of certain imperatives of the 'state of nature', created the rule of civil morality. Reference to Hobbes, Locke and Rousseau is in point to underpin the claim that relationship of human beings is basically contractual even in the absence of a formal agreement. They are relevant to the extent of tracing the origin of human behaviour.

11. Therefore, in the light of what exactly is conveyed by the phrase 'social contract', it is not difficult to understand what Ms. Benazir Bhutto held out when she spoke of a 'New Social Contract' in her election speeches. It implied a promise to bring about new laws in certain important areas and certain structural changes in the system of government for amelioration, welfare, and general health of the masses. The bonafides of what she intended to carry out, if put in power, should not be viewed with scepticism. She has constituted a Task Force to deliberate and formulate recommendations on the subject. Although the report of the Task Force has already seen the light, the merits and demerits of the promised 'New Social Contract' will be scrutinized after it is carried into effect.