

## Trusteeship And Trust

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In any democratic society there is a social compact to which every member of society is a signatory and which is binding on everyone because it contains the social order which will govern that society. The opposite of a social compact is anarchy and the rule of the jungle. In India the social compact is contained in the Constitution, which lays down what the nation stands for in clear terms in the Preamble, it enshrines the principle of equality of all, specially before the law, it gives the fundamental rights of citizens and their fundamental duties, it gives a policy framework to the State for the establishment of a just social order in the chapter on the Directive Principles of State Policy and it provides for the institutional arrangement of the State into the Executive, the Legislature and the Judiciary. The Constitution also ensures that the structure of the Indian State will be federal with a strong centripetal bias to hold the nation together, it divides the powers between the Federal and State Legislatures and it also contains adequate provisions for dealing with any present or future emergency, contingency, breakdown of the constitutional arrangement of government and for dealing with any unknown kind of situation which has to be dealt with urgently. In many ways this is one of the most comprehensive social compacts ever drafted and for the last sixty-two years it has withstood the stress and tension of war, national emergency, changing political scenarios and combinations, judicial crises, public agitations and even movements which are aimed at breaking the Indian Union. From every crisis we have emerged stronger, thanks largely to the Constitution.

One of the strengths of the Indian Constitution that it creates a trusteeship in which those who are placed in a position of authority are there as trustees of the Indian nation, whose owners are the people of India collectively. A person who is in authority is, to quote the Chambers Twenty-first Century Dictionary “in the state of being responsible for the conscientious performance of some task”. Because conscientious performance is the hallmark of trusteeship accountability for such performance is also a part of trusteeship. The people of India are the trustees in the matter of exercising their franchise and deciding to whom the reins of power will be handed over. To this extent the very people who are the owners of this nation are also collectively the trustees and must exercise their franchise in discharge of their responsibility. Failure to vote is a betrayal of the trust reposed in the citizen by the Constitution as the arbiters of the question of who will govern the state, the city or the village.

Whereas deciding who will govern is a collective responsibility, governance cannot be done collectively but has to be done by persons empowered to govern. In the matter of governance there are three equal wings of the State, the Executive, the Legislature and the Judiciary. The sum total of governance, therefore, is the function of the individual members or authorities within these three pillars of the State and harmony is ensured only if each of the actors performs his functions conscientiously and in a responsible manner. There is a Head of State, the President nationally and the Governor in each State. This functionary is entrusted with the job of ensuring that the government of the country and of the state conducts itself in accordance with the Constitution and the law, which the Head of the State is bound by solemn oath to preserve, protect and defend. The President or a Governor who forgets his oath and acts on the advice of his Council of Ministers to do something which goes against the letter and the spirit of the Constitution, has failed to live upto the responsibilities of trusteeship. This is a very delicate area and one must tread carefully because the Constitution itself in Articles 74 and 163 requires the President or the Governor, as the case may be, to act in accordance with the aid and advice of the Council of Ministers. However, if the Council of Ministers advises the President or Governor to do something which is clearly in conflict with the Constitution, it is the duty of the Head of the State to advise the Prime Minister or Chief Minister about the constitutional impropriety of what has been proposed and to try and deter him from following an unconstitutional path. Where the advice is patently unconstitutional, for example telling the President to ignore an order of court, the President or Governor, must make it clear that this runs contrary to his oath of office and he will not go along with the advice of the Council of Ministers. Had Fakhruddin Ali Ahmed at least advised Mrs. Indira Gandhi to reconsider the proclamation of emergency under Article 352 in 1975 and had he told her that he was not satisfied that such a grave emergency existed which jeopardised the security of India either by war, external aggression or armed rebellion (then ‘internal disturbance’), perhaps there would have been

no declaration of emergency and our democracy would have taken a very different path in which politics would not have been vitiated as it was post 1975.

The concept of trusteeship applies at all levels. The Prime Minister is a trustee, his Council of Ministers is both collectively and individually in a position of trusteeship, the Supreme Court of India is a trustee in all matters judicial and every civil servant is a trustee because he is assigned a task and must conscientiously perform it. Both Parliament and the State Legislatures are placed in a position of trusteeship because people have elected their representatives and sent them to the Legislature to perform their legislative functions with honesty and a desire to further the public good. Defection by taking bribes, pulling down governments because whims and fancies are not catered, for interfering in executive functions whilst neglecting the legislative ones are all betrayal of trust and, therefore, of trusteeship. From Prime Minister to *chaparasi*, from Chief of Army Staff down to the last sepoy, all are trustees and none more so than those in whose hands the reins of power are given. If the trustees discharge their functions with integrity and diligence the social compact will live and be strengthened,

What happens when there is failure in discharge of trusteeship? Let us begin at the top and go back to what I consider a post independence watershed year, 1967. This is a year in which a spate of defections took place, engineered by bribes, for the purpose of bringing down the duly elected government and substitute it by a government consisting of a splinter group supported by defectors. Madhya Pradesh and Haryana were the lead actors in this drama, but other States followed suit. Once defections were engineered it gave the members of the legislature a feeling of power in which they realised that they could command a price to put people in positions of power. The scheme of the Constitution is that at the time of general elections the voter will have a choice between parties and between candidates and will select the party or the candidate who, in the opinion of the voter, will give the best government. This choice could be dictated by party ideology or by the character of the candidate. The person so elected was expected to live by the promises that he had given at the time of election and to promote the ideology which had the backing of the people, which is why he was elected. Breaking away from the party through defection, abandoning the ideology or the programme on which he was elected, taking a bribe in order to defect and helping to bring to power a group which was not favoured as the majority during the poll all amount to a betrayal of trust and of trusteeship. The Tenth Schedule of the Constitution framed under Articles 102 (2) and 191 (2) was designed to stop defections, but because it is flawed in drafting and substance and is only selectively applied it has failed to stop defections. Every Member of Parliament or State Legislature who deviates from the platform on which he was elected betrays his trusteeship and has no business to be in the august House. Ideally he should be dismissed and even denied his franchise, but because we do not live in an ideal world such a person should be removed from the Legislature and debarred from standing for election for at least six years.

Every Minister, in effect, has one leg in the Legislature and the other in the Executive. He is required to swear an oath at the time of taking office in which he is required to uphold the sovereignty and integrity of India, faithfully and conscientiously discharge his duties as a Minister and do right to all manner of people in accordance with the Constitution and the law. The Constitution prohibits the arbitrary exercise of authority. Conscientious and faithful discharge of duties automatically implies that the Minister will be honest both intellectually and financially. In any case the Prevention of Corruption Act makes corruption a penal offence and a Minister cannot be a criminal and continue to be a Minister. Corruption, therefore, is a direct violation of the oath of office and the Prevention of Corruption Act apart, the Minister is liable to instantaneous dismissal on any hint of corruption. The discharge of trusteeship here by a Minister means that he will be personally honest, he will render to the President or the Governor advice which in his judgement is appropriate and best designed to further the welfare of the people, scrupulously follow the Rules of Business framed under Articles 77 and 166 of the Constitution, listen to the advice rendered by the civil servants but take firm decisions in which the programme and policies of the party he represents may be reflected but which apply evenhandedly to all people regardless of political affiliations. The Minister will discharge his responsibility to the Legislature for the manner his department functions, while emphasising to the civil servants that effective and prompt implementation of government policy is their responsibility and will be insisted upon. If the Minister is personally honest, does his duty conscientiously, suitably guides and leads his civil servants and discharges his responsibility towards the

Legislature there would be no corruption in government and deliverance of government services to the people would be efficient and smooth. In other words, if the Minister discharges his trusteeship honestly corruption will be rooted out and there will be no need for a Lokpal.

What applies to ministers and legislators applies equally and, perhaps, more forcefully to the civil servants, including the police. Articles 53 and 154 of the Constitution vest the executive power of the Union in the President and of the State in the Governor and this power is to be exercised through officers subordinate to the President or the Governor. In the exercise of his power the President or the Governor will act strictly according to the aid and advice of his Council of Ministers, but so far as actual conduct of the business of the government is concerned, this is done as per the rules framed under Articles 77 and 166, which distribute work amongst different ministries and departments, lay down the powers and functions of the ministers and also state how Secretaries to Government are to function and what powers they will exercise. When we read this in the context of Part XIV of the Constitution, that is, Articles 308 to 314 (Article 314 now repealed) one would find that this is the only Constitution in the world which has carved a niche for the Civil Services, prescribed their powers and functions, ensured that there is no nepotism in the appointment of civil servants and given them special protection under Article 311. What is more, under Article 312 All India Services are created which hold senior posts in both the Union and the State Governments, but whose appointing authority is the President and the ultimate cadre controlling authority is the Central Government. In other words, a trusteeship is created in which the Civil Services are also partners. Civil servants, therefore, have a very special role to play in which they are required to render advice to ministers which is well-informed, properly researched, impartial, fearless and objective. Thereafter every lawful order of a minister has to be faithfully implemented by the civil servant concerned, but evenhandedly so that there is no complaint of bias.

During implementation the civil servant has to ensure efficiency, total integrity and an attitude of sympathy with the persons who are affected by the implementation of policy. Because ultimately the citizen is supreme, the civil servant must be acutely sensitive to how people react and, where necessary, he must go back to the minister and apprise him of what is happening during implementation. If midcourse corrections are needed he should so advise and then take necessary steps to make such corrections.

The civil servant has another equally important role to play, which is to ensure that his subordinates perform their functions properly and call them to account when they are at fault. He, in turn, has to discharge his accountability to his own superiors, thus establishing a chain of interlocking accountability in which at each level the civil servant concerned knows his duties and responsibilities, acts accordingly and then is held to account for any failure or shortcoming. From the highest to the lowest in the Civil Service hierarchy this interlocking accountability must prevail. That is how the responsibilities of trusteeship are discharged.

If there is trusteeship then there has to be trust in those who are the trustees. Governance is basically a function of taking decisions, implementing them and standing by one's actions. Where there are mala fides wrong decisions will deliberately be taken and such decisions naturally constitute what is called corruption. Mala fide is what leads to corrupt practices. A trustee who takes mala fide decisions has to suffer the consequences of his wrongdoing and for him there can be no mercy. However, all decisions are not mala fide. In fact the majority of decisions are either bona fide or taken without due diligence and, therefore, wrong but not mala fide. Decisions in framing policy and decisions during implementation can, with the best of intentions, be proved on hindsight to be either wrong or not the best option which could have been adopted. However, the decision maker has to take a view in the context of what is here and now because no one has the gift of advanced hindsight. The circumstances may be such that a second or third best option has to be adopted because the best is either not available or cannot give the desired results at a particular moment of time. Let me elaborate. There is a limited time frame in which a particular work has to be completed. The contractor who gives the lowest bid may not be the person who is fast enough to complete the work in time. The next lowest bidder may have the speed but is not known for the quality of his work. The third lowest bidder may have both the speed and the quality. Supposing the decision maker opts for the third contractor. The work will cost a little more, but it will be completed in time and will be of the requisite quality. If the case is reviewed a few years later an objection could be raised that the

work was not completed as economically as would be done by the lowest bidder. What would be forgotten or not properly appreciated is the urgency of the work felt at the time that it was undertaken. If the time schedule factor is removed then the officer could be indicted for accepting the third lowest tender. That is what generally happens now. There were only bona fides in the case and the concerned officer actually took a decision which was beneficial because it gave quality work within the prescribed time limit. What we need to build into the system is trust for the officer taking the decision, judging him in the context of when the decision was taken and not applying hindsight and arriving at a wrong judgement on the officer concerned.

Moving away from contracts, in the course of a day an officer may have to face different contingencies and situations, each of which calls for an administrative decision. If the officer knows that he would be rewarded for quick decision-making and punished for undue delay he will not hesitate in deciding. If, on the other hand, he feels that any decision he takes will be subjected to entertainment of complaints and ex post facto enquiry which would cause him harassment, that officer may take the path of pushing files around but ensuring that no matter comes to a stage of finality. If he takes no decision, if there is no action, then there is nothing which could be inquired into because nothing has actually happened. The officer may save his own skin, but imagine the fate of citizens who are dependent upon quick disposal of a case. Should we not give protection to a civil servant so that his decisiveness benefits people at large? Our armed forces do face real enemies with whom right from independence we have been in a state of active belligerency, if not actual war. The armed forces need the weaponry and the preparedness level which could enable them to neutralise any threat. The Navy needs surface and underwater fighting vessels, the Army needs guns for the artillery and the Air Force needs aircraft which are weapons of war. The process of procuring these weapons is prolonged over years, sometimes for so long that the proposed weapon system becomes obsolete before it is purchased. This is a prime example of paralysis of decision making because we just cannot decide lest there be complaints of corruption. Meanwhile the armed forces remain without these weapons and are vulnerable to enemy attack. This is because we trust no one to be honest in purchasing weapons. We forget that because weapon purchases are of the magnitude of thousands of crores of rupees, the vendor who does not get an order will try and delay the purchase, even abort it, if his rival is likely to get the order. That is why complaints of corruption are floated and this causes the government, which is still in a post Bofors trauma, to immediately put things on hold.

The Chiefs of our armed forces have reached the apex of their career after a long period of service in which at every stage their suitability for the next higher command is tested. If we cannot trust the three Chiefs why were they ever selected for the post? It is submitted that the three Services have to convince government both about the need of a weapon system and the preference for a particular system based on rigorous field trials. If government is convinced then it must authorise the purchase and make the entire budgetary allocation available to the Service concerned. The guidelines of purchase must be laid down by government in very clear terms and the concerned Chief must constitute a purchase committee in which there would be representation from the Defence Ministry and the Finance Ministry also. This committee should be fully empowered to finalise the deal and the Chief concerned should be authorised to issue a 'sanction of purchase' order. If delay is controlled not only would the armed forces get the weapons they need but possible corruption obviated because there would be no delay. Thereafter if complaints are received there should be a preliminary enquiry, without stopping the flow of equipment and only if the enquiry indicates mala fides or criminal conspiracy should action be taken. Otherwise the complaints be thrown into the nearest waste paper basket.

Trusteeship demands trust because trusteeship is an enabling environment in which the benefits of governance can be delivered to the people. The process of decision making from the lowest to the highest level must be open and transparent, but it must not brook delay. Trust must be reposed on the functionaries who are required to take decisions, bona fides should be presumed and provided that every order, every decision is backed up by recorded reasons for taking it, then no further questions should be asked. Those who commit a breach of trust must be virtually obliterated, but the rest must be protected. Where there is no criminality investigating agencies which have coercive powers should not be given entry. If we want good government then we cannot have the kind of witch-hunting which Anna Hazare has suggested and his followers fine-tuned.