

Ombudsman as a Watchdog of Administration in India

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Abstract: *Ombudsman is a public officer who acts independently and non-partisanly and his function is to supervise the administration. He deals with the specific allegations or complaints from the public against administrative injustice and maladministration. The duties of an Ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations or mediation. For a nation to prosper, the administrative side of the nation has to function properly and efficiently and it has to be ensured that there is no corruption in the sphere of administration, because corruption is the biggest hindrance in the development of any nation. The Ombudsman plays a vital role in tackling the issue of corruption. In India, this role is played by the Lokpal in the Centre and the Lokayuktas in the State level. This paper traces the evolution of the institution of Ombudsman and analyses how he acts as a watchdog of administration in the Indian context.*

1. Introduction

In modern times, all democratic countries are manifested with large powers in the hands of administrative authorities having vast discretionary powers. Due to this wide discretionary powers a feeling has arisen in the public mind that vesting of such vast powers would lead to the abuse or misuse of power by administrative authorities resulting in maladministration and corruption. The traditional organs in a democracy do not provide an adequate and effective control mechanism over the administration. Lack of such a mechanism may negate democratic values. The quest for an effective control mechanism over the administration can be done through Ombudsman.

2. Ombudsman

Ombudsman is a Scandinavian word. It means an officer or commissioner. In its special sense, it means a commissioner who has the duty of investigating and reporting to Parliament on citizens' complaints against the Government [1]. An Ombudsman has no legal powers except power of inquiry. In simple words, Ombudsman is an officer of Parliament whose main function is to investigate the complaints or allegations against the administration. The main object of the institution of Ombudsman is to safeguard the citizens against misuse of the powers of the administration. Due to the Ombudsman, the error committed by the administrative or executive officials are exposed. The complaints or allegations of the citizens are investigated by the experienced persons who are members of the department concerned. The purpose of the Ombudsman is to control the administration and thus give protection to the citizens against injustice brought about by faulty administration [2].

3. Historical Background

The institution of Ombudsman first came into operation in Scandinavia. The institution was established in Sweden in 1809. In Sweden an Ombudsman can investigate a case on the complaint by a person or *suo moto*. He can recommend action to Parliament not only against public officials but also against Ministers against whom he has received complaints.

In 1919, Finland adopted Ombudsman system. In Denmark, the institution of Ombudsman has adopted in 1954. The Ombudsman has been empowered to supervise all State administration. Complaints can be made directly to the Ombudsman.

Norway [3] established Ombudsman system in 1963. In New Zealand, it was adopted in 1962 by the Parliamentary Commissioner (Ombudsman) Act, 1962. The Act of 1962 has been replaced by the Ombudsman Act, 1975. This Act provides for appointment of one or more Ombudsman and in the case of more than one, one of them is designated as the Chief Ombudsman for the allocation of work among them and also for co-ordination among them.

In England, the Ombudsman called Parliamentary Commissioner has been established by the Parliamentary Commissioner Act, 1967. Complaints against the administration cannot be made directly to the Ombudsman. It can be made to the Ombudsman only through a member of the House of Commons. In Australia, two-tier Ombudsman system has been adopted by the Ombudsman Act, 1976. There is Ombudsman system at the Centre and each State has separate Ombudsman.

Ombudsman in India Necessity

The administration in India has been acquiring vast powers in the name of socio-economic development. They discharge not only the administrative functions but also quasi-legislative and quasi-judicial functions. Therefore chances for administrative excesses and abuse of powers abound. Therefore, close supervision over the administration, and a mechanism for redressal of grievances become essential. The judiciary, Parliament and the executive have not been successful in controlling them. The courts, have expanded their supervision over the administration but still it is not sufficient.

PRATAP SINGH v. STATE OF PUNJAB [4]

The *Supreme Court* has observed that the courts cannot substitute their discretion for that of the official who has been conferred with the powers under law.

In the words of Jain and Jain, “The legislature has no mechanism at its disposal to probe into administrative faults and lapses in individual cases.” Wade [5] observed that the consciousness of the Ombudsman’s vigilance has a healthy effect on the whole administration making it more sensitive to public opinion and to the demands of fairness.

4. Initial Setup

The Central Government had taken some steps to create the Ombudsman system. The Administrative Reforms Commission headed by Moraji Desai had recommended for the adoption of Ombudsman system in India. The Commission submitted its report on October 20, 1966. The Commission propounded a scheme for setting up an Ombudsman system in India. While the Commission did draw largely from the experiences of other countries in drafting its schemes, nevertheless, it was *sui generis* in many respects and contained a number of peculiar features of its own to meet the special circumstances in India, viz., much larger population than other countries having the Ombudsman system; federal structure; parliamentary government with ministerial responsibility. The Government of India accepted the recommendations of the Commission.

The term Lokpal was coined in 1963 by Laxmi Mall Singhvi, a member of parliament during a parliamentary debate about grievance mechanisms. The word Lokpal was derived from the Sanskrit words “Lok” (people) and “Pala” (protector/caretaker), meaning ‘Caretaker of People’ [6].

The second definitive step was taken towards the creation of the Ombudsman system in India when in 1969 [7], the Lok Sabha enacted the Lokpal and Lokayukta Bill, 1968. The Bill followed the model suggested by the Commission with a few deviations. One major deviation made by the bill was to confine the jurisdiction of the Ombudsman to the central sphere only leaving the states out of its purview whereas the commission had suggested one comprehensive scheme covering the Centre-State administration as a whole. Before the bill could be passed by the Rajya Sabha, the Lok Sabha was dissolved and, consequently, the bill lapsed. A second attempt was made in 1971 when another bill was introduced in the Lok Sabha, but again the bill aborted owing to the dissolution of the Lok Sabha. A third attempt was made in 1977, when a new bill, entitled the Lokpal Bill, 1977, was introduced in the Lok Sabha. The bill was referred to the Joint Select Committee of the two Houses of Parliament which presented its report to the Houses in July, 1978. But the bill lapsed again with the dissolution of the Lok Sabha. The Lokpal Bill was presented before the Parliament in the year 2001, but lapsed on account of dissolution of 13th Lok Sabha. Each time the Bill was introduced in the House, it was referred to some committee for improvements and before the Government could take a final stand in the matter of the House was dissolved. So far, all attempts to establish the Ombudsman system at the central level have proved futile.

THE LOKPAL ACT:

In 2010 a draft [8] was created by the United Progressive Alliance to create an Ombudsman tasked with tackling

political corruption. The draft was circulated to various ministries for their review. It provided a mechanism for filing complaints against the prime minister, ministers and MPs. However, civil society groups rejected it as a toothless body with only recommendatory powers.

Anna Hazare started an indefinite hunger strike on 5 April 2011 at Jantar Mantar in New Delhi to pressure the government to create an Ombudsman with the power to deal with corruption in public places as envisaged in the Jan Lokpal Bill. The fast led to nationwide protests in support. The fast ended on 9 April 2011, one day after the Government accepted his demands. The government issued a gazette notification on the formation of a joint committee, consisting of government and civil society representatives, to draft the legislation. A Joint Drafting Committee was established, consisting of ten members which was chaired by Pranab Mukherjee. The Committee set 30 June 2011 as the deadline to complete the drafting process.

The Lokpal Bill was tabled in the Lok Sabha on 22 December 2011 and passed by voice voting on the first day of the three-day extended session of the Lok Sabha, on 27 December 2011, after a marathon debate that lasted over ten hours. The Lokpal body was not given the constitutional status as the Constitutional Amendment Bill, which provided for making the Lokpal a constitutional body, was defeated in the house.

DINESH TRIVEDI v. UNION OF INDIA [9]

The Supreme Court has recommended that till the constitution of an Institution like Ombudsman, a High Level Committee to be appointed by President of India in consultation with Prime Minister of India and Speaker of India. The Committee can be directed to monitor the investigation with regard to nexus between criminals and politicians, bureaucrats, media persons and some member of judiciary as disclosed in Vohra Committee Report.

The Lokpal Bill was passed under **Article 252** [10] of the Constitution of India, which is a legislation pertaining which pertains to the power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State. As of February 2018, and ever since the related Act of Parliament was passed in India, the Indian Government is yet to appoint a Lokpal.

LOKAYUKTA:

In spite of several attempts, the Ombudsman (Lokpal) has not been established at the Centre but some States have adopted the Ombudsman system (called Lokayukta). The institution of Lokayukta has been established in several States by enacting a statute. In some States Uplokyuktas have also been appointed.

Maharashtra was the first state to introduce Lokayukta through the Maharashtra Lokayukta and Upalokayuktas Act in 1971. Presently there are no Lokayuktas in the States of Andhra Pradesh, Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura and West Bengal.

Generally, the Lokayukt [11] under the State Acts is a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court. His appointment is made by the Governor as a result of consultation between the Chief Minister, Chief Justice of High Court concerned and the Leader of the Opposition. But in this process the opinion of the Chief Justice has primacy as he alone is more equipped to recommend names of a retired Chief Justice or a Judge. The term of appointment is for five or six years. The Lokayukt gets the same salary, perquisites and privileges which he was enjoying as a Judge or Chief Justice before retirement. In some of the States, provision is also made for appointment of Uplokayukt to share the workload of the Lokayukt. But complaints against ministers and officers of the rank of Secretary are generally to be enquired into by the Lokayukt.

JUDICIAL PRONOUNCEMENTS:

M.P. SPECIAL POLICE ESTABLISHMENT v. STATE OF MADHYA PRADESH [12]

The Supreme Court has ruled that the Governor may act independently in the matter of grant of sanction of prosecution against the Chief Minister or any Minister as in the matters there would be real danger of bias in the opinion rendered by the Council of Ministers and even in the case of grant of sanction to prosecute an ex-minister when decision of the Council of Ministers is shown to be irrational and based on non-consideration of relevant facts.

JUSTICE K.P. MOHAPATRA v. RAM CHANDRA NAYAK [13]

The Supreme Court while dealing with functions of Lokpal under s.7 of Orissa Lokpal and Lokayukta Act, 1995 has held that the functions of Lokayukta are of utmost importance in seeking that unpolluted administration of State is maintained and maladministration as defined under s.2 (h) of the Act is exposed, so that appropriate action against such maladministration and administrator can be taken. The investigation which Lokpal is required to carry out is quasi-judicial in nature.

5. Conclusion

Corruption is the deep rooted cause and it stands as the biggest obstacle in the development of a nation. In order to tackle this issue of corruption, the institution of Ombudsman plays the most important role and in the Indian context this role is played by the Lokpal. At present, the institution of Ombudsman is considered to be made only for the problem of corruption. This problem of corruption cannot be tackled only through legislation; a concentrated and unified effort is required from the society as a whole. For corruption to spread its root so deep into the system of any nation the citizens of the nations are equally to be blamed because it is not only the administrative officials who are at the wrong side. The only solution for this problem in India is the establishment of the Lokpal, because it is the demand of time. The consciousness of the existence of Ombudsman will make the administration more sensitive to the public opinion and to the demand of fairness. Also it is better to give constitutional status to the institution of Ombudsman.

References

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