



## OMBUDSMAN - A COMPARATIVE STUDY

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### **Abstract**

*Ombudsmanship is a concept of independent, easily accessible and soft control of public administration related to principle of democracy, rule of law and the good administration.*

*The purpose of the present study is basically a legal comparison of different countries but more focus on some selected Indian cities and analyzing them.*

*The focus of this study is to exhibit the appearances of Ombudsman institutions in different legal orders. Such study is necessary to find out the comparative status of legal working and acceptance denial of work environment. As we see, states and country are facing problems in making the concept a big success.*

*The researcher has used a **Doctrinal** approach to this study by reading different articles, annual reports of states, research paper and books and would a comparative study. Based on the above, critical examination of ombudsman at many levels is done as a humble attempt to evolve and expand the role of it. As this study will highlight the importance and would suggest the awareness of Ombudsman. The Whole idea behind it is to come up with such points which can contribute a little in filling the ambiguity. This we know that there are some lacunas because of which we fail to achieve the success. So aptly studying on the topic would help to come with some good suggestions and conclusions.*

### **Introduction**

An ombudsman is an official person, usually appointed by the government or by the parliament but, who is charged with representing the interests of the public by investigating and addressing complaints of maladministration violation of rights.

Garner defines “ He is an officer of Parliament having as his primary function, the duty of acting as an agent for Parliament , for the purpose of safeguarding citizens against abuse or misuse administrative power by the executive.”<sup>1</sup>

### **The History of Ombudsman – Sweden**

In 1713, King Charles XII of Sweden went to Turkey for about 13 years. And in his absence his administration came to a big down fall. He therefore, decided to make a supreme Ombudsman representative in Sweden. The main function of this was to control ,check and ensure the regulations abided by the judges and officials ,who are disregarding and are creating mal-administration. The Estates represented in the Parliament were successful in establishing their own ombudsman and embodying it in the newly written Constitution. In 1809, Sweden was the first country to establish a Parliamentary Ombudsman. The office was later renamed justitiekantsler- Chancellor of Justice. The justititeombudsman performs the same duties and powers provided by the Chancellor of Justice. The Riksdagens<sup>2</sup> Justitieombudsman is Sweden’s national parliamentary ombudsman institution.

The Parliamentary Ombudsman covers all central and local government agencies and bodies but does not include members of Parliament. There are 4 PO’s elected for 4 years by standing constitutional committee. Any complainants to be submitted in writing to the JO. Some 5000 cases are handled every year and 40% are unfound at early stage. JO has full freedom to decide the investigation cases. Now, it is JO’s duty to inspect from time to time the authorities. The cases can go on long term investigations .The cases taken up in courts work on the concept of independence of judiciary but the JO would look in matter whether the judges are working legally and does not violate. If found an error the JO would give some serious critical statements. and such opinions we might see in 600 JO decisions which represent 1/4<sup>th</sup> investigations.

### Features of Sweden Ombudsman

1. There is a high degree of independence in terms of the working of JO and free from executive intervention.
2. It has power to investigate and have access to documents and materials.
3. It has power to recommend not forcefully but it believes in transparency and credibility.
4. It presents annual report to the Parliament. In Parliament it can discuss the shortcomings and gaps in the regulatory and executive system.
5. The report is examined by Standing Parliamentary Committees and contents are checked and the committees provide statement of opinion.

### Ombudsman - United kingdom

In 1950's, there rose an urgent need of Ombudsman, because there was an increasing concern in administration in UK. In 1954, the idea came up through a Crichton Down affair. The matter was that during World War 2 about 725 acres of land was taken by Air Ministry with the promise to return it to the land owner. Instead the land was handed over to the Ministry of Agriculture. This case came up as an example of mal-administration. The British Section of the International Commission of Jurists, JUSTICE published a report<sup>3</sup>. As the report stated, there appeared to be:

“... a continuous flow of relatively minor complaints, not sufficient in themselves to attract public interest, but nevertheless of great importance to the individuals concerned, which give rise to feelings of frustration and resentment because of the inadequacy of the existing means of seeking redress.”

Taking this in mind the Parliamentary Commissioner Act of 1967 was passed, appointing a Parliamentary Commissioner for Administration. The PCA is appointed by Crown and not by Parliament. The PCA is appointed for 7 years.

### Features of PCA<sup>4</sup>

1. They investigate the complaints made by citizens against public bodies.
2. They design the working to redress the difference and act as an expert.
3. Access to Ombudsman is free to the citizens.
4. When dealing with complaints, ombudsmen seek to achieve a fair resolution at the earliest possible stage.
5. They use the flexible methods during the procedures like resolving the cases through mediation, recommendations.
6. They equally investigate the facts and search for evidence.
7. Ombudsman schemes publish a report yearly: explaining the work they have done; providing appropriate statistics about the disputes they have handled; explaining the way they have handled them.

The Parliamentary Commissioner has no power to award a remedy. There is the possibility of judicial review to challenge the rejection of the Ombudsman's findings.

### India

For a nation to prosper and develop it needs to have an organised system of administration; a system which seeks to redress the problems of the people and most importantly, is free from corruption. Maladministration leads to various obstacles in the progress of a nation. The root cause of this problem of maladministration is corruption. The institution of “ombudsman” came to the rescue and proved to be of immense importance and has been and is still being adopted by various nations to protect the rights of the individual against the administrative practices of the State and also to avoid inefficiency in the administrative set up of the State.

### The institution of Ombudsman in the Indian scenario<sup>5</sup>

In the year 1966, a commission was set up named the Administrative Reforms Commission and this commission recommended that an institution based on the lines of an ombudsman is necessary in India. It was established on 5 January, 1966. Initially chaired by Morarji Desai and later on K. Hanumanthaiah. And later on, a bill was

forwarded in the Lok Sabha in the year 1968 which was eventually passed in the year 1969. it eventually leads to the role of Ombudsman in India.

Once India attained freedom from the shackles of the British Empire, India had to deal with problems such as the Second World War, economic crises etc. And in order to tackle all these problems, India required a stable administrative set up. As was the case in Denmark, India also had to suffer a lot of administrative crises and there were numerous cases of maladministration and corruption surfacing during this period and such problems had to be tackled immediately.

### **The origin of Lokpal and Lokayukta in India**

The Lokpal Bill was first introduced by Shanti Bhushan in 1968 and passed by the 4th Lok Sabha in 1969. But before it could be passed by Rajya Sabha, the Lok Sabha was dissolved and the bill lapsed. Subsequent versions were reintroduced in 1971, 1977, 1985, 1989, 1996, 1998, 2001, 2005 and in 2008, but none of them were passed. In 2011, during the Parliament's Winter Session, the Lok Sabha passed controversial Lokpal Bill, but it was subsequently turned down in the Rajya Sabha.

### **Need of Lokpal<sup>6</sup>**

#### **Existing System**

1. No Politician or senior officer ever goes to jail despite huge evidence because ACB and CBI directly come under the government.
2. System proposed by Civil Society - Lokpal at centre and Lokayukta at state level will be independent bodies. ACB and CBI will be merged into these bodies. Power to initiate investigations against any officer or politician without needing anyone's permission.

#### **Existing system**

1. No corrupt officer is dismissed from the job because CVC, is only an advisory body. Whenever it advises government to dismiss any senior corrupt officer, its advice is never implemented.
2. System proposed by the Civil Society: Lokpal or Lokayukta will have complete powers to order dismissal of a corrupt officer.

#### **Existing System**

1. No action is taken against corrupt judges because permission is required from the chief justice of India to even register an FIR against corrupt judges.
2. System proposed by the Civil Society- Lokpal and Lokayukta shall have powers to investigate and prosecute any judge without needing anyone's permission.

#### **Existing system**

There is so much corruption within CBI and vigilance departments.

1. . Article: JAN LOKPAL BILL: COMBATING AGAINST CORRUPTION by Rahul Sharma.
2. System proposed by the Civil Society- All investigations in the Lokpal and Lokayukta will be transparent. After completion of investigation, all case records shall be open to public.

#### **Existing system**

1. Weak and corrupt people are appointed as heads of anti-corruption agencies.
2. System proposed by the Civil Society- Politicians will have absolutely no right in selections of Chairperson and members of Lokpal and Lokayukta and selections will take place through a transparent and public participatory process.

### Existing system

1. Citizens face harassment in government offices. Sometimes they are forced to pay bribes.
2. System proposed by the Civil Society- Lokpal and Lokayukta will get public grievances resolved in time bound manner, imposed a penalty of Rs 250 per day of delay and that will be cut from salary of guilty officer and award that amount as compensation to the aggrieved citizen.

### Some Features Of Lokpal Bill, 2011 <sup>7</sup>

1. Lokpal is at the centre and Lokayukta in each state will be set up.
2. Like Supreme Court and Election Commission, they will be completely independent of the governments and no minister or bureaucrat will be able to influence their investigations.
3. Cases against corrupt people will be worked on. Investigations in any case will have to be completed in one year.
4. The loss that the corrupt person caused to the government will be recovered at the time of conviction.
5. If any work of any citizen is not done in prescribed time in any government office, Lokpal will impose financial penalty on the guilty officers, which will be given as compensation to the complainant.
6. Now, people can approach Lokpal for ration card or passport or voter card if it is not being made or if police is not registering . Lokpal will have to get it done in a month's time.
7. Members will be selected by judges, citizens and constitutional authorities and not by politicians, through a completely transparent and participatory process.
8. The entire functioning of Lokpal / Lokayukta will be completely transparent. Any complaint against any officer of Lokpal shall be investigated and the officer will be dismissed within two months.
9. CVC, departmental vigilance and anti-corruption branch of CBI will be merged into Lokpal. Lokpal will have complete powers and machinery to independently investigate and prosecute any officer, judge or politician.

### Lokayukta (at State level)

The institution of Lokayukta has been established in several states by enacting statute in the State Assemblies. These states are ; Orissa (1970), Maharashtra(1971), Rajasthan(1973), Bihar(1973), Madhya Pradesh(1975), Uttar Pradesh(1975), Gujarat(1975), Karnataka(1979), Andhra Pradesh(1983), Himachal Pradesh(1983). Only 19 Indian States have Lokayukta. Maharashtra was the first State to introduce the institution of Lokayukta in 1971. There are no Lokayuktas in Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura and West Bengal. Karnataka's Lokayukta is considered one of the strongest. N. Santosh Hegde, former Lokayukta of Karnataka, uncovered one of the biggest mining scams (quantified at Rs.12, 228 crore) of the country in 2011<sup>8</sup>.

**Appointment of Lokayukta-** The Lokayukta is usually a former High Court Chief Justice or former Supreme Court judge and has a fixed tenure. There are very few success stories in State Lokayukta; Kerala, Karnataka, Uttar Pradesh.

### Karnataka Lokayukta

Karnataka Lokayukta is the ombudsman institution of the Indian state of Karnataka. It was established in 1984 to investigate and report on corruption in the Government of Karnataka and to redress public grievances related to state government employees. This Lokayukta that was once considered the strongest Lokayukta in the country. It stripped off its investigative powers before transferring them to the Anti-Corruption Bureau in 2016.

As per the Karnataka Lokayukta Act, 1984, a person appointed the Lokayukta (the institution and its head bearing the same names), who either held the office of a Judge of the Supreme Court of India or that of the Chief Justice of a High Court of India. The Lokayukta is appointed by the Governor of Karnataka on advice of Chief Minister of Karnataka in consultation with the Chief Justice of the High Court of Karnataka, the Chairman of Karnataka Legislative Council, the Speaker of Karnataka Legislative Assembly, the Leader of the Opposition in the Karnataka Legislative Council and the Leader of the Opposition in the Karnataka Legislative Assembly<sup>9</sup>.



According to an Article, a report from 2005 to 2011 was watched . Karnataka's Lokayukta carried out only 357 suo motu raids against individual officials but received and tried to trap 2,681 officials (and 59 private persons) in response to 2,159 citizen complaints. In other words, for every six cases investigated in response to citizen complaints only one is initiated by the department suo motu. In Karnataka, more than 66% of the raid cases by the Lokayukta were initiated between 2006 and 2011, when justice Santosh Hegde was the Lokayukta.<sup>10</sup>

### **Process of Investigation**

The need to have a strong and impactfull investigation is the demand both at Centre and at State . It is usually seen that a sanction to prosecute and approval for investigation is a big problem seen . A survey done in 2011<sup>11</sup>, came out as, the cases, in 65.9% (43.3%) of the trap (raid) cases sanction for prosecution was granted. But when seen as a function of investigated cases, the percentage of cases receiving sanction for prosecution goes up to 94.3 (90.5)% of trap (raid) cases.

The public debate has also emphasised the failure to complete investigations as one of the key problems to be resolved in the design of the Lokpal. Analyse the capacity of the Karnataka Lokayukta to resolve this problem within their existing legal and bureaucratic framework. The success of the Karnataka Lokayukta in investigating cases suggests that the existing legislative and bureaucratic framework in Karnataka does not impede investigation of corruption offences. Our analysis leads to the conclusion that much of the Indian debate has sought to extinguish a problem that does not have a very significant impact on the effectiveness of the anti-corruption agency. The conviction rate of 20.5% (20%) in trap (raid) cases is much lower than the rate of convictions in criminal prosecutions in anticorruption cases in India in recent years, which is between 34% and 40%<sup>12</sup>.

**Finding-** If criminal conviction is used as the measure of success then the best Lokayukta in the country is undoubtedly a failure. But, the Lokayukta does not administratively control the criminal court. Hence, we should allot this failure because of criminal conviction model.

### **Kerala**

The Ombudsman was created as an idea to the increased power given to local self government institutions (LSGIs) by the Kerala Panchayati Raj Act of 1994 ('1994 Act'). In 2001, the Act was amended to include provisions for the Ombudsman. The Kerala Ombudsman take or entertain cases only relating to local self government institutions. These include gram panchayats, block panchayats, district panchayats, municipalities and municipal corporations. Because it is at the state level it does not reaches to higher or national authorities. This also makes it unique among comparable institutions in India. Kerala Panchayati Raj Act, 1994 in its 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendment gave more power to LSGI. Most of the facilities at state level is provided by panchayat and state government.

The Ombudsman lacks their own independent investigative staff. And for that they have to take help and support from the outside parties.

One of legal powers of Ombudsman is seen, when there is a loss to a citizen LSGI gives an order to compensate the amount from the salary of the responsible person. If the case involves profit by corruption, the Ombudsman may also order penalties in addition to any compensation. Ombudsmen can only serve for a single 3 year term, and afterwards they are ineligible to hold any government office or any position in a "corporation, company, society or university" controlled by the government of Kerala. The form is currently being updated to make it easier for citizens to understand. Submission of a complaint requires a Rs. 10 fee.<sup>13</sup>

The only data available on complaint submissions to the Kerala Ombudsman is contained in the office's annual reports. They show that the number of complaints submitted has remained fairly consistent – around 1100 each year – though there was a large jump in 2008-2009 to 1400<sup>14</sup>.





Ombudsman has extensive legal powers. He can order investigations, compel parties to attend a sitting, and issue binding legal orders. Earlier, the seven member panel was abolished, the single Ombudsman has direct control over every stage of the grievance redressal process. He decides which cases are within jurisdiction. He hears evidence and orders investigations and weighs the evidence of those investigations. He decides when and how a case is concluded.

As there is a lot of freedom and power under Ombudsman and if seen, there could be misuse of powers.

**Findings:** The Kerala Ombudsman has requested funding for an investigative team for eight years and has always been denied. The Kerala Ombudsman has requested an office at a more accessible location for eight years, and remains in the same location.

### **Rajasthan**

Earlier, there was a Public Prosecuting Department present in Rajasthan. However, there was no provision of any institution by which the complaints of misuse of posts, corruption or inaction of the posts against ministers and public servants could be investigated and explored.

Hence, in 1973, Rajasthan Lokayukta and the Up-Lokayukta Ordinance was passed. And it came into force on 3<sup>rd</sup> February 1973.

The Lokpal and Lokayukt Act 2013 for the establishment of Lokpal at centre and Lokayukta as the state level institution came into force on January 16, 2014. On 28<sup>th</sup> February 2014, a high level committee was constituted by state government under the chairmanship of Narpal Mal Lodha<sup>15</sup>, for working on the Act.

The Government will select the Lokayukta after consulting the Chief justice of the High Court and the leader of opposition of the Legislative Assembly. The Sub-Lokayukta shall be appointed after the consultation of the Lokayukta. They have a 5 year term.

The Justice N N Mathur Commission was constituted in 2009 to probe cases pertaining to land use conversion, land allotment, corruption and irregularities by public servants during 2004-2008, the lokayukta said in a release<sup>16</sup>.

### **Statement by Justice S.S.Kothari<sup>17</sup>**

Claiming that Rajasthan has the 'weakest' anti-corruption ombudsman, Lokayukta Justice (Retd) S. S. Kothari sought amendments to the Lokayukta and Up-Lokayuktas Act, 1973 to add more teeth to the institution. Justice Kothari said "Lokayukta is weakest in Rajasthan" as it comprises only 35 officials, while the number in Karnataka is 1,500 and, 600 in Madhya Pradesh. The Rajasthan Lokayukta received the highest number of complaints against the Revenue Department.

**Finding:** Justice Kothari said in Rajasthan the Lokayukta is not authorized to investigate or to take action and it can only recommend the government for legal action against an accused after verification of complaints. The infrastructure of the anti-corruption body is not up to the mark in the state.

### **Suggestions**

1. The most common problem researcher realized was that in most states they do not have sufficient staff and do not have an independent investigating team. So, the government should provide a team or collaborate CBI's and ACB's with Lokayukta for more effective and promising results.
2. There should be transparent and open procedures for the appointment of the Ombudsman so that there should not be the misuse of the power.
3. Just like RTI, where people through media and the efforts of government make people aware the usage of it. In the same way, Lokayukt should be given attention and more awareness should be spread.
4. The investigation should be done in a secret way so that less interference of political parties and corrupt high level of officers could be seen.

5. A strong suggestion to the legislation to frame a strong and comprehensive law where the punishment could be minimum for 5 years and maximum as life imprisonment. In rarest cases, death penalty could be served.
6. All Public servants including the Chief Minister in Lokayukta and at center the Prime Minister should be within the jurisdiction.
7. There should be Fast Track courts to complete the cases within the time limit of 6 months. And cases should be tracked online. Every detail of the case should be verified and open to public.
8. Some strong laws should even be made for private companies and private employees in terms of corruption.

### Conclusion

In current legal framework, throughout the whole world, there is no specific and effective legal system. All the countries are facing the same administrative problems. Roots of corruption is so deep that it will take a lot more time to eradicate. The biggest problem is that prevention of corruption methods, people are not aware. And still to secure themselves they use wrong methods to be done. So people should alert themselves and should create an awareness about the importance of Lokpal. The proposal for the Lokpal at the moment fails to address this core problem and for that reason is bound to fail to achieve its primary purpose: the criminal conviction of corrupt officials. And if there is a public demand, definitely the legislation is bound to initiate itself. Because in today's scenario, public had lost faith in working of the system. So, to gain confidence the legislation and the Judicial system together come out with strong compact laws and rules. Laws can only act when people come forward and complaint against corrupt practices, all the laws will have effect unless people will come forward and fight against evil of corruption. They should raise issues through media and file complaint against the corrupt people. At present, there is no law to deal with corruption in the private and corporate sector. Our criminal justice system is base on the principle of natural justice. Now, it is a high time to think about the nation.

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