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THE ROLE OF OMBUDSMAN TO CONTROL THE ADMINISTRATIVE ACTIONS IN INDIA

RAJESH KUMAR
RESEARCH SCHOLAR
SHRI VENKATESHAWARA UNIVERSITY
GAJRAULA

ABSTRACT

Maximum democratic countries had adopted welfare concept. The main feature of welfare state is to maintain the transparency in their work. Public has the right to ask the question and get the knowledge regarding administrative works. They can ask the question through media and members of people's representatives. It is a best tool to control the administrative actions and corruption. If anybody injured by the administration injured man can get Judicial and non judicial remedy. There are three institutions to control the administrative arbitrariness and corruption e.g. C.V.C., C.B.I. & Ombudsman. All these institutions are the part of non judicial remedy. Ombudsman can play a vital role to control the arbitrariness of the administration because C.V.C. & C.B.I. are failing to control these problems. Both are institutions are only an investigation authorities. And they are come under the control of union government but ombudsman will be independent. I want to say through my paper that ombudsman is need of the day to control the administrative actions and corruption in India.

KEYWORDS

ombudsman, discretion, organ, arbitrariness, democratic, parliamentary system. lokpal and lokayukt, welfare state. judicial control, none judicial control, ultra-vires, malafide intention.

INTRODUCTION

There are so many countries in the world which followed the democratic system. India is also following it. And it has adopted parliamentary democratic system. Under this system Pain and complaints of the citizens can be removed through asking the question before the parliament. In this way we can control the arbitrariness of the administration. If the person aggrieved by the administration, he may avail the remedy by filing the application before the court. If he is unable to get the remedy from the court, he can complain before the member of parliament who tried to solve that problem. But parliament also fails to provide the proper justice (solution) of all those problems. People believe that parliament cannot solve the problem of the citizens against the government. With the beginning of welfare concept, the work of government also increased. Government was only capable to provide all social services and get the economic object. Its result that government interfered in public works directly with this effect the complaints against government was increased. Peoples believed that parliamentary system was not sufficient to stop the complaints. So the power of discretion had become the need of that time. Now this time the discretionary powers of the administrative officers have been developed but the scope of judicial review is curtailed by administrative discretion. We can say that the discretionary powers are doing the exclusion the power of judicial review. The deficiencies of parliamentary system and judicial review on the traditional pattern have led the world to think of substitute or additional institution to control. There are many subsidiary institution e. g. Ombudsman, C.V.C., C.B.I. to control these complaints against government filed by the aggrieved person. They provide fast relief against administrative actions. It is not mandatory to follow Law to get remedy against it by aggrieved person. These institutions are very inexpensive. And their procedure is very simple. They do not have need to follow any procedure aggrieved person can present himself his matter. He does not need to legal representatives. It has proved that these are best institutions to control the arbitrariness, corruption and wrong decisions of administrative authorities.

DEFINITION OF TERM OMBUDSMAN

Ombudsman means A Representative, Agent, Officer or Commissioner. It is impossible to given a perfect Definition of Ombudsman. But **Garner** rightly said "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 of administrative power by the executive." And in the words of Professor S. K. Agarwal "The term ombudsman refers only to institutions which have three basic and unique characteristics:

- (a) Ombudsman is an independent and non partisan officer of the legislature who supervise the administration.
- (b) He deals with specific complaints from the public against administrative injustice and mal- administration.
- (c) He has the power to investigate, criticize and report back to the legislature, but not to reverse administrative actions.

The Ombudsman Committee of the International Bar Association has described the office thus: "An Office provided for by the Constitution or by action of the Legislature or Parliament and headed by an independent, high-level public official, who is responsible to the Legislature or Parliament, who receives complaints from aggrieved persons against Government agencies, officials and employees, or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports (International Bar Association)

This contemporary definition of the term of Ombudsman is not agreed to universally, but it does serve as a starting point in defining the role.

HISTORICAL BACKGROUND

It is not a new concept. We are well aware with this because this institution was introduced in Scandinavian countries. This institution introduced first time in Sweden 1809. After Sweden this institution was established in Finland 1919. In 1953 Denmark was also form the organization of ombudsman. Norway also appointed an ombudsman in 1963. New Zealand was the first common wealth country which implement it in 1962. than England followed it in 1967 and Australia adopted it 1976. india has also accepted this institute by **The Lokpal and Lokayuktas Act, 2013** and came into force from 16 January 2014.

POSITION OF OMBUDSMAN IN VARIOUS COUNTRIES

The organization of ombudsman is developed by Scandinavian countries after those countries. It was adopted by commonwealth countries and those countries which followed parliamentary system. This concept is recently adopted by India. Now maximum countries of the world have adopted it because this institution is proving to control the administrative discretion.

SWEDEN

Ombudsman was established first time in 1809 by Swedish government. There were two purposes behind the establishment of the post of ombudsman. First one was to control for the civil administration, and other one was to control for army administration. It was called supreme prosecutor. They appointed as a representatives of the parliament (ricksdeg) by the Judges. He must have some qualities e.g. Good skills; impartial, Expert in Law and experienced in judicial functioning. He was appointed for four-year tenure. It is not only the function of ombudsman to execute the law as a representative of parliament. But also he will start the legal process against administrative actions e.g. violation of law, arbitrariness, partiality and negligence. Against all these administrative acts (contrary to law, arbitrariness, partiality and negligence) victim can make a complaint to ombudsman. He has the power to investigate any case Suo Motu but at the same time any administrative decision cannot be quashed or reviewed.

DENMARK

Denmark forms this body in 1954 with more powers and rights than Sweden to investigate and vigil the work of state administrative authorities (civil and army). All these power were given by statutory provisions so we can say Danish ombudsman was greater than Swedish. He is required to keep himself informed as to

any person pursues unlawful ends, takes arbitrary or unreasonable decision or otherwise commits mistakes or acts of negligence in discharge of his function. Victim can make complaints to the ombudsman directly. If he is satisfied that any case has made out by the complaint. Any information can be called from the respective departments. Therefore he is not empowered to quash a decision or give any other remedy to the complainant. His function is only to publish a report, calling attention of the government and the public to the need for rectifying the error found by it.

NORWAY

The office of a commissioner for the civil administration was created in 1960 by legislation. And a commissioner for military administration had been created earlier in 1952. The function which is to be discharged by the Norwegian ombudsman is 'to ensure that the individual citizen suffers no wrong through decision made by administrative authorities, and that they, and all persons exercising power in the service of the state do not make mistakes or neglect their duties'. He can investigate into individual cases; either on the complaint of an aggrieved citizen or *Suo Motu* after the decision has already been taken by administrative authorities. He investigates the facts and makes his own finding for the information and guidance of the administration.

FINLAND

Ombudsman was adopted in 1919 by Finland. There are many provisions regarding ombudsman incorporated in the constitution of Finland. It is appointed by the parliament. He holds the status of a representative of parliament. He works as like a parliamentary representative. And the main function of ombudsman is vigil on the enforcement of law. His main function is vigil on both civil and military functions.

ENGLAND

Ombudsman is known as a parliamentary commissioner for administration in England. The post of parliamentary commissioner for administration was created by parliamentary statute (Parliamentary Act, 1967). Ombudsman is appointed by crown on the recommendation of prime minister. He holds this post till the age of 65 year. Parliament can remove it by a resolution passed by both houses. The main function of ombudsman is to probe those complaints, which is done by aggrieved person, who is aggrieved with the result of misadministration in administrative actions by government officers. Its jurisdiction is limited to central government only. Ombudsman controls over all those subjects matters which are come under the liability of central government.

OMBUDSMAN IN AUSTRALIA

Australia had also introduced it. Australia is a federal country. Australia followed two tier system of ombudsman. Every state has its separate ombudsman. And center has also a separate ombudsman. It is known as commonwealth ombudsman system. It came into force by Ombudsman Act, 1976. It was unable to get the aim so it was amended time to time. It was amended last time in 1983.

The Australian ombudsman system consists:

- (a) A Commonwealth Ombudsman.
- (b) Three deputy commonwealth Ombudsman.
- (c) A defense force Ombudsman.

The tenure of ombudsman is for seven years, and he is eligible to reappointment. He is appointed by governor general. He can hold the office until the age of 65 years. He can be removed from his office on an address by the two houses of parliament praying his removal on the ground of misbehavior or physical or mental incapacity. The ombudsman has been given powers to probe the complaints made to him against action taken by several major government departments. His function is to investigate either on a complaint or *Suo Motu* into a matter of administration taken by a department. Taking of action refers to (a) the making of a decision or recommendation or the formulation of a proposal. (b) Failure or refusal to take action. But certain type of action are exclude from the ombudsman's jurisdiction e.g. action of ministers.

NEW ZEALAND

It was the first parliamentary government country which was appointed ombudsman by Parliamentary Commissioner Act-1962. But it was not competent to control all administrative machineries so it was amended in 1975. By this act Local governments and maximum government tribunals has been came under the jurisdiction of ombudsman. Due to heavy work load a number of ombudsmen were appointed. One of them chief ombudsman and all others were ombudsman. All of them were appointed on the recommendation of House of Representatives by the governor general. Ombudsman was separate from executive and legislative, but he was known as representatives of parliament. He was appointed for five year. But before this term he can be removed with a resolution from House of Representatives by governor general on the grounds of incapability, insolvency, negligence in his duty and misconduct. Every aggrieved person can make a complaint and he can take *suo-moto* actions against misadministration. He has vigil on the government functions, and investigated against them. He sends a report to parliament. His decisions has finality, no one can go to court against his decisions.

REVIEW OF LITERATURE

Ombudsman is an investigating authority as like central vigilance commission and central Bureau of investigation. I have read many books to collect the material for this paper. I have analyzed that maximum writers explain its international scenario. Dr. M.P.Jain & S.N.jain referred in his book its origin, importance, historical back ground, international perspective and requirement in India. He focused mainly international scenario and its origin. He explained the position of ombudsman in England, Australia, New Zealand and India. He suggested that we have strongly required of ombudsman because in modern time it has cleared that all democratic countries follow two tendencies. One, large powers have been, and are being conferred on the administration with the result that a huge administrative machinery having vast discretionary powers has come into existence. The administration has come to play a vital role in influencing and shaping the socio – economic order in today's society. Two, a feeling has arisen in the public mind that vesting of such vast powers in the administration has generated possibilities and opportunities of abuse or misuse of power by administrative functionaries resulting in mala administration and corruption. So ombudsman is only one option to control it. Dr. J.J.R.Upadhyaya points out that a good administrative system indicate representation and responsible for public. To removes the public complaints against all administrative wrongs ombudsman was established in Scandinavian countries. As like these countries India has also adopted responsible administrative system. In India a lot of complains are filed against administration. With this result we also felt the need of ombudsman. So it has been established in India but it is in developing stage. Dr. S.P. Sathe referred his views in his book Administrative Law; he introduced it as an institute against corruption. It wills vigil administration and administrative works. If it found guilty and corrupt any administrative authority he can investigate and recommend to punishment. It can exercise some powers of civil court. But it will come under the term of public servant under The Corruption Prevention Act-1988.

RESEARCH METHODOLOGY

The proposed study is the study of judicial independence and judicial accountability, so this study will be based mainly on Descriptive, Analytical and Doctrinal methods. Besides these methods some other methods will also be applied according to the need of the study. Where things are of introductory and observatory in nature, the method to be applied would be Descriptive. Regarding analysis of the legal provisions, social status of a country and various socio-psychological problems of the victim, the method to be applied will be Analytical. Since the proposed study deals with one of the heinous problems of the society, therefore to analyze the problem, this work will be based on the Book, journals, , and other materials. In such case, the method to be applied will be doctrinal.

OBJECTIVES OF THE STUDY OF OMBUDSMAN

1-Judiciary has a limited control over the administrative actions. So we can say judicial control has limited criteria to control the administration. Judiciary cannot check all administrative actions. If any case make before the court. Court decides it on the basis of facts and evidence. With this result court cannot discuss on the merits and demerits of administrative functions. Judiciary cannot establish their discretion instead of administrative discretion.

- 1- Judiciary cannot force administration to do something, but this limited power may cause of a big harm. Although there are some grounds of judicial control e.g. ultra-vires, mala-fide intention, unreasonableness & use of excess jurisdiction, but all these words are very doubtful and have uncertain meaning. It is not an easy work to get remedy on all these doubtful and uncertain grounds. It is a tuff task to collect evidence against government because governmental documents cannot be found easily.

- 2- Administration is not bound to disclose reason of decision except if it is possible under the provisions of respective act and the principle of natural justice must be followed in that action. Although the courts are forced to follow the rule of natural justice and disclose the reasons behind the judgment, but it is impossible in administrative cases. Apart from it there are so many cases in administrative actions which are not presented before the court. Another cause is expensive and slow justice. Our judicial system is very expensive. Due to work load it takes a long time to decide case. So we require such machinery or institution which can provide fast and low expensive justice. So ombudsman is that institution which is success to provide it.
- 3- Internal Administrative control is unsuccessful and unable to improve their mistakes and negligence. Administrative control does not provide the guarantee for good administrative behavior. Higher administrative authorities do not seriously entertain the complaint against their subordinates due to departmental bias as a result people do not get the remedy. So an independent body must be established to control the administrative negligence, faults and mistakes which review the administrative actions on real sense.
- 4- Legislative body is also unsuccessful to control the administrative actions because it has no time for discussion on individual complaints it spends maximum time for the discussion on policy matters and legislative proposals.
- 5- All enforced laws are failed to control the wrongful acts of administrative authorities.

We should establish an institution to fulfill all above objectives which can stop corruption & bad administration. And provide the remedy against the complaint of administrative authorities, because it is the privileges of ombudsman to call the administrative documents. So he can probe against administration with effective way. Its procedure is very simple & low expensive. It can provide remedy on those circumstances where the court is helpless. Public have more trust on it than any other institution because it is neither an administrative nor a government body. It is independent and impartial institution.

HYPOTHESIS

There are four major problems (population, pollution, corruption and terrorism) in all over the world. Corruption and terrorism both are more dangerous for all countries. The purpose of my paper is to control corruption. Corruption can be stopped by maintaining transparency in administrative functions. We have established many institutions to control it and made lots of Laws regarding the prevention of corruption, but we cannot get success in our aim. Ombudsman is a hope of ray to control corruption. India is not a first country which introduced ombudsman. It has been established in many countries as like Norway, Finland, Denmark, England, New Zealand and Australia. In 1962, Justice M.C. Shitalwad said in an All India Advocates conference, that the day has come when we should form an institution as like ombudsman to control corruption. After it, many times many bills were lying before the parliament but they could not be passed due to some technical problems. At last it was passed in 2013. Indian government has been passed The Lokpal and Lokayukta Act-2013. I think it can be create a barrier against corruption. But it is not absolutely correct that it will become corruption free for India. It will be depend on the awareness and co-operation of public.

DISCUSSION ON THE ROLE OF OMBUDSMAN IN INDIA

India is a democratic country and followed parliamentary system. We have adopted a federal government concept. There are two types of government first one is union or central government and other one is state government. After the independence of India ministers and officers had worked in good faith. After a decade Indian politics converted into economic source. A politician, who has become a rich person, before joined it he was a poor. Now these days Indian politics has become the Salter house for the smugglers and unsocial elements, because they are well aware with the benefits and privileges of politics. There are so many politicians who are involved in murders, scams, illegal acts, blackmailing and covered himself with the mask of public representatives. They are known as a reputed and renounced person in society. Political status and privileges are also attracted to all industrialists. Many industrialists, advocates, doctors, film industrialists, are interested to join politics. It is a curse of Indian politics that Indian government is about to become insolvent but representatives are becoming richer. It is a symbol of corrupt politics. Public representatives are disconnect with public and involved in scams it is a best example of none transparent and irresponsible government. Today's politicians think himself a ruler instead of public servant. If scams and corruption may be removed India becomes developed. Political corruption can be stopped by the establishment of ombudsman. We can say no other country has requirement of this institution like India.

The reasons of the development of ombudsman are same as other welfare countries. After independent of India the welfare concept was followed by Indian constitution. In this way the administrative era was start in India. With the development of administrative powers, corruption is also increased. Corruption is known as misadministration, misuse of discretionary powers, misbehaves etc. When Justice M. C. Shitalwad was addressing in 1962 in the meeting of all India advocates. He reminded to administration about their liabilities and suggested to establishment an institution like ombudsman. In 14th October 1966, the Administrative Reform Commission recommended in his report about immediate establishment of ombudsman to stop the corruption. It was mentioned as lokpal and lokayukt in the report of commission which was independent from executive, legislative and judiciary. Indian Government accepted all these recommendations and introduced a bill before the parliament, Lokpal and Lokayukt Bill, 1968. It was lapsed due to the dissolution of Lok sabha. In 1977 a new bill was introduced regarding the establishment of ombudsman by Morar ji Desai government, but it was also lapsed in monsoon session 1979 due to the resignation of prime minister Morar ji Desai. Rajiv Gandhi government was also introduced it in 1985, it was similar as Scandinavian countries. According to this bill ombudsman can be given recommendation to punish that guilty person under the provisions of Indian penal code. It did not pass because opposition strongly opposed this bill. Ombudsman bill introduced by maximum governments in their tenure (1989, 1993, 1997, 1998, 2003 & 2005), but it could not be passed. But in 2011 a great movement demanded this organization this movement(India Against Cuuruption) was led by some renounced persons and social workers, e.g. Anna Hazare, Arvind Kejriwal, Kiran Bedi etc. it was a grit step against corruption. After all government introduced again a new bill against corruption in 2011, lokpal & Lokayukt bill, 2011. It was passed and known as **The Lokpal and Lokayuktas Act, 2013**. This act was passed by rajya sabha on 17 December 2013, Lok Sabha passed it on 18 December 2013, and President of India gave his consent on 1 January 2014. It came into force on 16 January 2014.

THE LOKPAL AND LOKAYUKTAS ACT, 2013

ESTABLISHMENT OF OMBUDSMAN (Sec.3, THE LOKPAL AND LOKAYUKTAS ACT, 2013)

There are a chairperson and not more than eight members in lokpal office. A Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in Clause (b) of sub-section (3); and

(b) Such number of Members, not exceeding eight out of whom fifty per cent, shall be Judicial Members:

Provided that not less than fifty per cent, of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,

(a) As a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) As a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

(a) The Prime Minister—Chairperson;

(b) The Speaker of the House of the People—Member;

(c) The Leader of Opposition in the House of the People—Member;

(d) The Chief Justice of India or a Judge of the Supreme Court nominated by him—Member;

(e) One eminent jurist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President—Member.

(Section -4, The Lokpal and Lokayuktas act, 2013)

The Chairperson or a Member shall not be (Section- 3(4), THE LOKPAL AND LOKAYUKTAS ACT, 2013)—

(i) A Member of Parliament or a member of the Legislature of any State or Union territory;

- (ii) A person convicted of any offence involving moral turpitude;
- (iii) A person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;
- (iv) A member of any Panchayat or Municipality;
- (v) A person who has been removed or dismissed from the service of the Union or a State, and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be affiliated with any political party or carry on any business or practice any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—
- (a) He holds any office of trust or profit, resign from such office; or
- (b) He is carrying on any business, sever his connection with the conduct and management of such business; or
- (c) He is practicing any profession, cease to practice such profession.

TERM OF OFFICE OF CHAIRPERSON AND MEMBERS

The Chairperson and every Member shall be appointed for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier; (Sec.6, THE LOKPAL AND LOKAYUKTAS ACT, 2013)

Provided that he may—

- (a) By writing under his hand addressed to the President, resign his office; or
- (b) Be removed from his office in the manner provided in section 37.

Under section 37 there are many provisions which are mentioned below.

- (1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.
- (2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehavior after the Supreme Court, on a reference being made to it by the President on a petition signed by at least one hundred Members of Parliament has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.
- (3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2), on receipt of the recommendation or interim order made by the Supreme Court in this regard until the President has passed orders on receipt of the final report of the Supreme Court on such reference.
- (4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—
- (a) Is adjudged an insolvent; or
- (b) Engages, during his term of office, in any paid employment outside the duties of his office; or
- (c) Is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.
- (5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehavior (Section-37, THE LOKPAL AND LOKAYUKTAS ACT – 2013).

RESTRICTION ON EMPLOYMENT BY CHAIRPERSON AND MEMBERS AFTER CEASING TO HOLD OFFICE

There are many restrictions imposed on Chairperson and members of Lokpal. Under Section 8 those are given below-

Section- 8 (1) on ceasing to hold office, the Chairperson and every Member shall be ineligible for—

- (i) Reappointment as the Chairperson or a Member of the Lokpal;
- (ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;
- (iii) Further employment to any other office of profit under the Government of India or the Government of a State;
- (iv) Contesting any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.
- (2) Notwithstanding anything contained in sub-section (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

Chapter-vii (section-20 to 24) is related with complaints, inquiry and investigation. And under section-53, The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

If any person make falls complaint, he will be punished under section-46(1), notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

In this act a lot of provisions incorporated which protected to Lokpal and their members. No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made there under (Section-53, THE INDIAN LOKPAL AND LOKAYUKTAS ACT-2013).

REPORTS OF LOKPAL

It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respect of the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament. (Sec.-48).

ESTABLISHMENT OF LOKAYUKTA

Every State shall establish a body to be known as the Lokayukta for the State, if Not so established, constituted or appointed, by a law made by the State Legislature, to deal with complaints relating to corruption against certain public functionaries, within a period of One year from the date of commencement of this Act (Section-63, THE INDIAN LOKPAL AND LOKAYUKTAS ACT-2013).

Before the establishment of this act many state has enacted lokayukt act in their states and appointed also. Andhra Pradesh in 1983 by Andhra Pradesh lokayukt and vice lokayukt Act-1983, Bihar Lokayukt Act-1973, Himachal Pradesh Lokayukt Act-1983, Karnatka Lokayukt Act-1984, Madhya Pradesh passed it in 1975, Gujrat Lokpal and Lokayukt Act-1975, Maharashtra Lokayukt and Vice-Lokayukt Act-1971, Orisa Lokpal and Lokayukt Act-1970, Rajsthan Lokpal and Lokayukt Act-1971, Uttar Pradesh Lokpal and Lokayukt Act-1975.

THE ROLE OF INDIAN JUDICIARY AND OMBUDSMAN

Indian judiciary did not decide any case regarding union ombudsman because it is a new concept. It is established in 2013. Before it many institutions were investigated administrative arbitrariness e.g. Central Vigilance Commission and Central Beuro of Investigation. But it had been established in states so judiciary plays a vital role to empower it. *Vishwas Rao v. Lokayukta Maharashtra* (AIR1985 Bom. 137), in this case, the high court has stated that an action may constitute both a grievance and an allegation. In certain cases, the action may amount to an allegation and its consequences may result in a grievance. The overlap is indispensable as in one case the definition emphasizes the consequences of an act, in the other, the motive for it. *Lokayukta and uplokayukta v. T.R.S. Reddy* (1997) 9 SCC 42., supreme court had held that the lokayukta /uplokayukta are high official dignitaries it would be obvious that they should be armed with appropriate powers and sanctions so that their opinions do not become mere paper directions. These authorities should not be reduced to mere paper tigers but must be armed with proper teeth and claws so that efforts put in by them are not wasted and their reports are not shelved. *Ram Nagina Singh v. S.V. Sohini*

(AIR 1971 Pat. 36), Patna high court stated that the lokyukta is to carry on the investigation into complaint and then to make a final report which is recommendatory in nature. The lokayukta has no jurisdiction to pass a binding order which will operate in its own force. On the basis of above case study we can say it is an investigating agency only.

FINDINGS AND SUGGESTIONS

After above discussion I want to state that there are some loopholes which must be recovered. After recovering those we can establish an institution which will control the administrative arbitrariness and corruption. Some suggestions are given below-

- 1- It must be absolutely independent from Executive, Legislative and Judiciary. If any organ will have interference in this institution it will not follow fair process.
- 2- It should not only be an investigating agency but also it must be a punishment authority.
- 3- All public servants and authorities must come under the jurisdiction of ombudsman e.g. Ministers, Directors, Secretaries, chairman and Prime Minister etc.
- 4- No member must be appointed from politics.
- 5- It must be elected not appointed. If it will be appointed then he will perform his duty under the influence of appointing authority.
- 6- A must be given to all citizens to complain against public servants. If the complaint found falls, that person must be punished by a symbolic punishment. It should not be as mentioned in The Lokpal and Lokayukt Act -2013, imprisonment for one year or with fine one lakh.
- 7- There must not be any limit for the complaint.
- 8- It must come under the Judicial Review power of court.
- 9- President of India must be free from its jurisdiction.
- 10- It must come under the definition of public servant.
- 11- Complaint must be with affidavit on the behalf of complainant.

CONCLUSION

The study concludes with the finding that it will be a first step against corruption and administrative arbitrariness. Although it is not a substitute body of court, but its main purpose is to develop a clear and clean administration. It can raise difficulties in the working of Accountable Administrative system. All ministers are accountable for their work before the parliament. This institution is also established by parliament and it will do all function under directions of parliament so they should not have any problem regarding accountability. Some critics say that it can become an arbitrator while it is not possible. Lokpal cannot build a house it can help to remove the uncleanness because in a democratic system administrative officers have limited powers. They have a lot of restrictions also. And the main function of Lokpal is to remind their limits to administrative officers. We cannot say that after the establishment of Lokpal corruption will be absolutely removed. It will depend on the awareness of citizens and cooperation of public. If it did not succeed absolutely yet it can create a barrier in the way of corruption.

SCOPE FOR FURTHER RESEARCH

Ombudsman is a new concept for India. It is introduced for the first time in 2013. I hope my paper will provide a good direction for new researchers. It has a great scope because it is secret that it will succeed in stopping the arbitrariness of administration and corruption. It is an experiment because all institutions have failed to control these problems.

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