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Topic- OMBUDSMAN

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I) **Ombudsman**- the increasing discretionary powers of the administration in the modern welfare State affect the day to-day life of the people. This tremendous increase in the discretionary powers of administration has generated the possibilities of misuse of the powers by administration at the same time. The complaints of mal-administration, corruption, nepotism, administrative inefficiency, negligence, bias etc. have increased. It was felt necessary to evolve an adequate and effective mechanism to keep the administration under control. And this search has produced the idea of “**Ombudsman**” which means a “watch dog of the administration” or “the protector of the little man” This institution of “Ombudsman” was first developed in Sweden in 1809. Later on it was copied by Norway and New Zealand in 1962.

Unique characteristics of Ombudsman-

- (i) The Ombudsman is an independent and non-partisan officer of the legislature who supervises the administration.
- (ii) He deals with specific complaints from the public against Administrative injustice mal-administration, (or may proceed on his own information in similar circumstances).

He has the power to investigate, criticize and report back to the legislature, but not to reserve administrative action.

II) **Position of Ombudsman in India**- In all India Lawyers Conference held in 1962, Sri M.C. Setalvad gave the idea of establishing an institution similar to that of an Ombudsman. In 1966, the Administrative Reforms Commission recommended the office of Lokpal similar to that of the Ombudsman for the following reasons-

- (i) Since a democratic Government is a Government of the people, by the people and for the people, it has an obligation to satisfy the citizen about its functioning and to offer them adequate means for the ventilation and redress of their grievances.
- (ii) The existing institution of judicial review and Parliamentary control are inadequate in view of ever expanding range of Governmental activities, most of which are discretionary.

On the basis of the recommendation made by the Administrative Reform Commission the Lokpal and Lokayukta Bill was prepared by the Government and placed in the Parliament in 1969 but it lapsed owing to dissolution of Lok Sabha.

The Administrative Reforms Commission, which recommended the Office of Lokpal, formulated the following principle;

- (i) Lokpal should be demonstrably independent and impartial.
- (ii) His investigations and proceedings should be conducted in private and should be informal in character.
- (iii) His appointment should, as far as possible, be non-political.
- (iv) His status should be equivalent with the highest judicial functions in India.
- (v) He should deal with the matters involving acts of injustice, corruption and favoritism.

The Bill defined misconduct by providing that a public man will be deemed to have committed misconduct if he directly or indirectly allows his position to be taken advantage of by any of his relatives or associates and by reason thereof such relative or associate secures any undue gain or favor to himself or to another person or cause harm or undue hardship to another person. It further provided that the public man will be liable to be punished if he is motivated by 'motives of personal interest' or if he abuses or attempts to abuse his position to cause harm or undue hardship, to any other person. Even

ex-Ministers and ex-M. Ps. are within the ambit of Lokpal if their misconduct is not more than five- years old.

Note: Please refer latest Lokpal Bill/Act.

III) **Appointment of Lokpal-** According to the Lokpal Bill of 1977, the Lokpal is to be appointed by the President in consultation with the Chief Justice of India and the speaker of Lok Sabha and the leader of opposition in the Lok Sabha. He is appointed for five years. He cannot be re-appointed for more than next one term nor any employment under the Government be given to him after his term. He can be removed from his office during his term only on the enquiry which is to be held by a sitting or retired Judge of the Supreme Court in the same manner as there is provision for the removal of a Judge under judges (Enquiry) Act, 1968. The enquiry report is to be placed before both the house of the Parliament and each house has to pass an address for his removal by a majority of its total membership and a majority of not less than two-third of its members present and voting.

IV) **Qualifications-** The Bills lays down the following negative qualifications:

- (i) He shall not be a member of Parliament or of State Legislature
- (ii) If he is holding office of profit or trust, he shall resign before he takes charge of the office of Lok pal.
- (iii) If he related to any political party, he will sever his relations from it.
- (iv) If he attends to a profession, he will leave it.
- (v) If he is carrying on any trade or occupation he will break off his relations with its management.

V) **Salary-** The salary, pension and other perquisites of the Lok pal equal to that of the Chief-Justice-of India.

VI) **Functions and Powers of Lok pal-** The Lok pal may investigate any action taken by or with the approval of a Minister or secretary, being action taken in the exercise of his administrative functions, if any case where-

- (a) A written complaint in duly made to the Lok pal by a person who claims to have sustained injustice in consequence of maladministration in connection with such action or who affirms that such action has resulted in favor being unduly shown to any person or his accrual of persona benefit or gain to the Minister or to the secretary, as the case may be, or
- (b) Information has come to his knowledge otherwise than on a complaint under clause (a) that such action is of the nature mentioned in the clause.

VII) Matters not within the jurisdiction of Lok pal- The Lok pal shall not conduct an investigation in respect on any of the following matters-

- (a) Action taken in a matter certified by a Union Minister as affecting the relations with foreign states;
- (b) Action taken under the Extradition act 1963 or the Foreigner's Act, 1946;
- (c) Action taken for the purposes of investigating crime or protecting the security of the state;
- (d) Action taken for the determination whether a matter shall go to court or not;
- (e) Action taken in matters which arise out of the terms of contract governing purely commercial relations of the administration with customers or suppliers, except where the complaint alleges harassment or gross delay in meeting contractual obligations,
- (f) Actions taken in respect of appointment, removal etc. or public servants;
- (g) Grant of honors' and awards.

VIII) Procedure- Investigation shall be conducted in private and the procedure for conducting an investigation shall be such as the Lokpal considers appropriate in the circumstances of the case.

For the purpose of any such investigation the Lokpal shall have all the powers of a Civil Courts while trying the suit under the Code of Civil Procedure, in respect of the following matters-

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Discovery and production of documents;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any office.

Contempt- The proceeding before the Lokpal shall be deemed to be judicial proceeding. But he shall have no power to punish for contempt.

IX) Lokayukta in States-

Even before the introduction of Lokpal Bill, several states in India enacted the Lokayukta Statute. For example, Bihar, Orissa, Maharashtra, Rajasthan, Tamilnadu and Uttar Pradesh enacted the Lokayukta States. In 1979, the State of Karnataka has also adopted this institution.

In U.P., the U.P. Lokayukta and Up- Lokayukta Act of 1975 was passed. According to this Act, the Lokayukta shall be appointed by the Governor with the consultation of the Chief Justice of the High-Court and leader of the opposition in the Legislative Assembly. The Up-Lokayukta shall be appointed by the Governor in consultation with Lokayukta. The Up-Lokayukta is subject to the administrative control of Lokayukta.

Qualification- The Lokayukta shall be a person who is or has been a judge of the Supreme Court or a High Court. The Lokayukta or Up-Lokayukta should not be a member of any Legislature and also should have no connection with any political party. He shall not any office of profit nor should carry any business or any profession.

Term- He shall hold the office for five years unless the resigns earlier or is removed from the office by the Governor on the ground of misconduct or incapacity.

It should be noted he shall be removed from his office subject to the provisions of Art. 311 of the Constitution. An enquiry is to be conducted by a judge of the Supreme Court or of a High-Court and the enquiry report must be approved by at least two-third majority of each house of state legislature.

Lastly the Lokayukta or-Lokayukta may investigate any action taken by-

- (a) Minister or a secretary, or

(b) Any public servant including a public servant for this purpose by the State Government. The State Government may exclude any complaint involving a grievance or an allegation made against a public servant from the jurisdiction of Lokayukta or Up-Lokayukta.

The Lokayukta and Up-Lokayukta are required to submit annually a consolidate report on the performance of their functions to the Governor.