



INDIAN OMBUDSMAN: SOME PERSPECTIVES

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-: ABSTRACT :-

Ombudsman is generally defined as an office established by constitution or statute, headed by an independent high level public official who is responsible to the legislature, who receives complaints about injustice and maladministration from aggrieved persons against government agencies, officials and employees or who acts on his own motion. He has power to investigate, criticize, and recommend corrective action and to launch prosecution. The pioneers are the Scandinavian or Nordic countries. It was first established in Sweden in 1809 and then adopted by Finland in 1910, by Denmark in 1955 and Norway in 1963. It has since been established in most of the developed and developing countries such as the Soviet Union, the U.S.A., France, Britain, Canada, Holland and Newzealand. The ombudsman now believes that democratic institution is incomplete without an Ombudsman. J.B. Mentario is convinced that “in the universal quest for a machinery to control administration, no other single institution has held so much attraction for so many as the Scandinavian Ombudsman. Indeed the popularity of the ombudsman idea is a response to the unprecedented growth of bureaucratic power in this century, and the apparent limitations of existing machinery of administrative control. Today a host of Ombudsman and Ombudsman-like institutions (about 350) exist all over the world.

Keywords :-Administration, Public, Committee, Government, Chairman, Cooperation, Commission.

INTRODUCTION :-

The basic features accepted as essential to any ombudsman institution are: he is generally a person of prestige and influence; he enjoys independence from control by any other official; he is appointed by the Executive and confirmed by a designated proportion of the legislative body preferably more than a two-third majority; he is assured a long term-not less than five year with freedom from removal except for a cause determined by a two-third majority of the legislative body; he is given a high salary equivalent to that of a designated top officer; he has the freedom to investigate any act or failure to act by any agency, official or public employee; he has access to all public records he might find relevant to his investigation; he has access to all public records he might find relevant to his investigation; he has discretionary powers to determine what complaints to investigate, what criticism to make or publish; and he enjoy immunity for himself and his staff for civil liability on account of official action.

SIGNIFICANCE OF THE INSITUTION:-

There is no denying the fact that corruption and mal-administration are rampant in every sector of public life in India. A.D. Gorwala had found that after making allowance for the tendency to exaggerate and blame a substratum of truth remains out of many allegations of lack of integrity throughout country. However, two years later, Paul H. Appleby, an American expert on public Administration, gave a certificate of good health to India administration on this count by making the flattering remark that “India is one of the dozen or so governments in which honesty has been carried to its highest levels. A decade after Appleby report was published, it was observed by the Santhanam Committee that “corruption has increased to such an extent that people have started losing faith in the integrity of public administration.” Nirad C. Chsudhary gave vent to such a popular feeling when he observed that there is hardly anyone from a petty clerk to minister who is not manageable with an adequate amount of gratification.



The enormous proportion that corruption has assumed in India is substantiated by the findings of various Commissions of Enquiry instituted for investigation into the allegations of corruption against ministers and the unearthing for unaccounted wealth running into several crores of rupees as a result of the C.B.I. and income tax authorities raids on public men and government official and their being charged with possessing assets disproportionate to their income misappropriating State funds.

OBJECTIVES OF THE STUDY:-

1. To Study of the Historical Background of Ombudsman in India
2. To study the institution of Ombudsman in Indian scenario
3. To study the role of Ombudsman in local government administration

METODOLOGY OF THE STUDY:-

For this study purpose will make use of quantitative as well as qualitative methods of research ,although focusing primarily on qualitative means of exploration. The facts, interpretations, judgments, legislative provisions cited in this paper will be extracted from various reliable web sources, textbooks and judicial pronouncements. A brief part of the means use will also be derived from other related articles and journals for better clarity and understanding.

CORRECTIVE MEASURES:-

Of late some corrective measures have been initiated to deal effectively with the problem of corruption. According to the Central Vigilance Commissioner, these measures relate to the areas of preventive, detective and punitive vigilance. Preventive vigilance measures comprise simplification of rules and procedures, reduction of the area of discretion and patronage, introduction of public information and assistance counters in departments and places having public dealings, setting up of “redressed of public grievances machinery” in each ministry, systematic and surprise inspection by senior officers, improvement in wages and service conditions of public servants. Surveillance and detection measures consist of greater surveillance over corruption prone areas, particularly at public contact points by strengthening the vigilance machinery where necessary, a closer watch on officials of doubtful integrity by the vigilance machinery, checking of the assets of persons of doubtful integrity on a selective basis and traps and raids to be organized where necessary. Deterrent punitive action constitutes investigation vigilance cases to be speeded up according to a time-bound schedule, procedure for disciplinary action to be improved for speedier finalization of vigilance cases and deterrent punishment to be awarded promptly, legislative measures for confiscation of ill-gotten wealth, the legal provision for premature retirement of person of doubtful integrity to be enforced rigorously to weed out corruption elements and wide publicity of the punishment awarded to the guilty persons.

Despite these measures, corruption is not showing any signs of decline. The need of an ombudsman is, therefore, being felt all the more. The basic need for such an institution primarily arises out of a feeling of dissatisfaction with the existing relations between the government and the citizens in a democracy and the inadequacy of the present government machinery in handling the growing volume of contacts between the citizens and the government. In the course of study, it was found that “it is not merely the complexity of rules and procedures that lead to delays, laxity of administrative supervision, lack of interest and of spirit of responsibility, lack of sensitivity towards public interest and may be some of the other important contributory factors.” The only alternative to the limitation of the existing grievance agencies as Jagannadhan and Makhija pointed out, is to create and impartial. Administrative Reforms Commission (1966) had accordingly in its interim report on Problems of Redress of Citizens’ Grievances recommended the setting up of the offices of lok Pal and Lok Ayuktas with had created a



good deal of interest in the country.

LOK PAL BILLS:-

Convinced of the need and desirability of ombudsman, the Central Government had introduced Lok Pal bills in 1971 which had lapsed with the dissolution of the fourth and fifth parliaments. Another Lok pal bills was introduced in the Lok Sabha on 28 July 1977 by Charan Singh (Janata Party), home Minister. The main features of the bill were the following:

1. The President of India will appoint the Lok Pal after consulting the Chief Justice of India, the Chairman of the Rajya Sabha (the Vice-president) and the Speaker of Lok Sabha. In the 1971 bill, the president expected to consult the Leader of the Opposition instead of the Chairman of Rajya Sabha.
2. The Lok Pal shall be appointed for a period of five years. The grounds and procedure for removing him shall be same as those for removal of judges of the Supreme Court.
3. His salary and allowances will be charged on the Consolidated Fund of India and not subject to any cut by Parliament once they have been fixed by the President for tenure.
4. He shall have the power to enquire into the complaints of corruption and misconduct against the Prime Minister and members of Council of Ministers of the Union, Members of either House of Parliament, the Chief Ministers, members of the Council of Ministers of Union Territory, members of the legislature of Union Territories, members of the Executive Council of the Delhi Administration and the Mayors of the municipal Corporation in the Union Territories.
5. A public man commits misconduct if he is actuated in the discharge of his functions by motives of personal interest or improper or corruption motives, causes undue hardship to any person, allows his position to be taken advantage of by relatives and associates. Further "corruption" includes anything punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1947.
6. The Lok Pal will nit entertain complaints of misconduct, if the cause of action is more than five years old and unless the complainant is able to persuade the Lok pal that there was sufficient cause for not making the complaint within five years
7. The bill provided for appointment of one or more special Lok Pal to cope with complaints which the Lok Pal may be to dispose of expeditiously.*
8. To ensure that complaints are not frivolous and vexatious, the bill made it obligatory on a complainant to deposit Rs 1000/- but the Lok Pal is empowered to waive the requirement of deposit in deserving cases
9. The lok Pal will communicate his findings and recommendations to the competent auothority which will convey to the Lok Pal within three months of receipt of his report the action taken or proposed to be taken on the basis of this report. If the Lok Pal is not satisfied with the action taken on the report he is empowered to make a special report to the President on this and have this report laid on the table of either House of Parliament.
10. Whereas in the case of other public men action taken on the Lok Pal's recommendations is initiated by the respective ' competent authority ' which does not include the public the public man who is the subject of the complaint, in the case of the Prime Minister he receives the copy of

the complaint and the Lok Pal's findings, has them laid before the Council of Ministers and then initiates as part of the competent authority which is the Council of ministers the action to be taken



probably against himself.

The bill was referred to the Joint Select Committee which proposed significant changes in the bill in the report submitted to the Parliament on 20 July, 1978. The report lacked unanimity in respect of jurisdiction of Lok Pal. The majority view that the M.Ps. should also be covered by the legislation naturally disturbed a section of the House but the recommendation seemed fully justified. In the original bill the competent authority to whom complaints were to be initially referred was left to be specified by the government. To avoid any ambiguity and controversy at a later stage, the Select Committee stressed the desirability of not subjecting M.Ps to any extraneous authority for their actions since these members themselves constitute an all powerful legislature. According to the committee's report, the competent authority in their case should be presiding officer of the House concerned.

Secondly, a major controversy centred round the selection of the appropriate authority for receiving complaints against the Prime minister. In the original bill, the Prime Minister himself was made the 'competent authority' for the purpose. Such an arrangement violated the elementary principles of jurisprudence and natural justice. The committee realized that own case. Since the Council of Ministers including the Prime Minister is responsible to Parliament, the select Committee recommended that the speaker of the Lok Sabha should be made the competent authority in this case.

Thirdly, the Select Committee felt that since the Chief Ministers are primarily responsible to their respective legislatures, the Central government need not extend its jurisdiction to their cases. Besides the Central government has the power under the Commission Enquiry Act, 1952 to deal with cases where adequate action has not been taken by a state in respect of complaints received against a Chief a minister.

Another salutary change made by the select Committee pertained to the incorporation of a provision for deterrent punishment to persons who make false or frivolous complaints of misconduct against public men. All such irresponsible persons will be liable to imprisonment for a period upto one year and a fine of upto Rs. 3000/-. With the fall of the Janata government the fate of the bill was sealed.

In his resolve to provide clean administration to the country, Prime Minister Rajiv Gandhi after getting the Anti-Defection Bill passed brought forth Lok Pal Bill in the autumn session of the Parliament in 1985. Significantly, the draft bill excludes the Prime Minister, the Speaker and the M.Ps from the purview of the Lok Pal in addition to the President and the Vice-President. Rajiv Gandhi for his part seemed initially to have been in favour of including the Prime Minister in the purview of the Lok Pal. However, some of his advisors appear to have persuaded him out of it. They argued that the inclusion of the Prime Minister within the purview of the Lok pal would amount to the Head of the Government subjecting himself to standing judicial enquiry in country where it has become fashionable to level charges against persons in high authority. This will cause institutional instability.

Notwithstanding this argument many would prefer to see the Prime Minister under the purview of Lok Pal. According to them, any exercise in cleansing up the deep and widespread roots of corruption is not likely to carry either conviction or credibility with the masses so long as the Prime Minister is not able to say "I am clean and prepared to subject myself to probe by Lok Pal like others." Peter W. Rodino, a successful American crusader against political corruption observes that no man is above law-be he a prince or a pauper or the President. In a democracy the chief executive no matter how powerful he is, must be accountable. Nixon's ouster has restored the people's faith in their system of government. The phrase "a government of a democracy lies in the integrity of its institutions and the trust and confidence of the people."



The bill was then referred to the Joint Select Committee of both Houses of Parliament. It is regrettable that its report is still awaited. The Joint Committee had a historic opportunity to recast the bill and make it an effective instrument for combating and misconduct in high places.

CONSUMER'S OMNUDSMAN IN INDIA:-

The plight of the consumer in India is deplorable. Though there is no shortage of laws to protect the interest of the consumers, for example, Prevention of Food Adulteration Act, providing for life imprisonment, not a single offender has been awarded deterrent punishment. The anti-adulteration agencies are obviously inefficient and corrupt. In such a situation, the salvation of the consumers lies only in 'self-help.' Consumer protection is a problem of gigantic magnitude and unless the Indian consumers joint hands to form consumer groups at the district. State and national levels they will have nobody to blame themselves for their plight.

The reason for the failure of the consumer movement to take roots lies in the conspicuous lack of community consciousness among the Indian people who need to be educated on their rights as consumer

As mentioned earlier, Swden has also a Consumer Ombudsman since 1971, with the duty of ensuring that two laws for the protection of consumers are observed: the Marketing Practices Act and the Prohibiting Improper Contracts Terms. The aim of the former Act is to protect consumer against misleading advertising and other undesirable commercial marketing and that of the latter Act is to protect consumers from undesirable conditions which may appear in printed agreement forms- 'Standard Contracts'. When the ombudsman either as a result of a notification from outside or in the course of his own scrutiny notices an undesirable marketing action or an undesirable condition in a contract, he first tries to have the matter set right voluntarily by discussing it with those responsible. If it proves to be impossible to obtain correction by voluntary agreement, he can refer the case to the Market Court, requesting it to prohibit the entrepreneur from continuing to use the undesirable marketing action or the undesirable condition in the contract. An in junction by the Market Court is usually issued under penalty of a fine meaning that the court determines a sum of money that the entrepreneur must pay if he violates the prohibition. There is no appeal against the decision of the Market Court. During the first four years of the instituting the decision of the Consumers Ombudsman, 17,000 cases were field at his office, close to 15,000 of these were complaints mainly from consumers. The majority of the cases were settled by a voluntary agreement including some sort of correction, 138 cases were brought to the Market Court.

The Monopoly and Restrictive Trade Practices Commission (M.R.T.P.C.) also provides similar protection to the consumers in India but unfortunately provided they are by and large still unaware of their rights and protection provided to them by this institution and continue to be exploited by businessmen and traders. According to N.P. Bhatt, Director General (Investigation), Department of Company Affairs, Government of India, the majority of the people are under the misconception that the M.R.T.P.C. deals only with multinational companies and monopoly houses. In fact the Commission has jurisdiction over the entire marketing big and small, and it is the big brother of the consumer, always watching his interest and helping him to assert himself. The Government by amending the M.R.T.P. act in 1984 had redefined an unfair trade practice and armed the commission with powers to issue orders against companies and compensate the consumer. Any misleading statement harmful to him would be illegal and tale claims regarding discount sales or lotteries to push sales would attract the commission's scrutiny. A consumer could also complain against a deal or for not providing after sale service as promised. A company could be penalized for making wrong statements for promoting their sales, for instance, a unit could be proceeded against if it advertised that it had spent crores of rupees on researched



and development without having done so. Consumer organizations and the commission have put in the dock several well-known companies including Khaitan India, Sherrie Louise, Body Wrap, Food Specialties, Batas, Kelvinator and Usha International.

OMBUDSMAN IN THE STATES:-

The institution of Lok Ayukta has been established in some States in India such as Bihar, Maharashtra, Rajasthan, Uttar Pradesh, Karnataka, and Andhra Pradesh. The Lok Ayukta is an authority to review the administrative action of various government departments from the point of view of public grievances. It is to punish such persons as are corrupt and do not act according to law. The need of such an institution is evident from the fact that the increase in the powers of the government over the citizens had rendered insufficient the traditional legal protection they had been enjoying; the judicial reviews, besides being expensive had proved to be too formal and sketchy to meet the aspirations of the people and the parliament procedures too were inadequate. The Lok Ayuktas dealt with cases where grievances resulted from lack of integrity on the part of government officials. Cases of corruption due to collusion were difficult to prove. That was where the Lok Ayuktas came in. the great advantage of the institution was that it had access to all departmental files. A person could have a complaint examined in a simple and inexpensive manner.

ANTI-CORRUPTION BUREAU IN KARNATAKA (ACB) :-

The Anti-Corruption Bureau is specialized agency responsible for collection of intelligence with regard to corruption, maintaining liaison with the various Departments of government through their vigilance officers, enquiries in to complaints about bribery and corruption, investigation and prosecution of offences pertaining to bribery and corruption and tasks relating to preventive aspects of corruption. The bureau handles all cases registered under the provisions of prevention of corruption Act 1988. Besides this, the Bureau conducts enquiries based on the information received from the public containing specific and verifiable allegations of corruption against public servants this Bureau was established by the G.O No. DPAR14 SELOU 2016, Dated March 2016 and functions directly under the administrative control of the DPAR (Department of Personnel and Administrative Reforms) of Karnataka state Government.

In Himachal Pradesh, a complained did not expect justice from the Government if the allegation was against a senior officer. On the other hand he had easy access to the Lok Ayukta. It may be mentioned that Himachal Pradesh Lok Ayukta Act has some special features. Even the office of the Chief Minister has been brought in the ambit of the Act. Further, the provision of a complaint being supported by an affidavit was a deterrent against making false complaints. In the opinion of Prime Minister Rajiv Gandhi, the Lok Ayukta must possess the wisdom to watch over the work and conduct of public men who are entrusted with the affairs of the nation. It must be just and yet be speedy in its dispensation. According to President, R. Venkataraman, the institution of Lok Ayukta has a salutary effect on the tone of public administration, making it more responsive, efficient and receptive to popular needs.

Inaugurating the first national conference of Lok Ayuktas at Simla in 1986 the Himachal Governor Vice Admiral R.K.S. Gandhi called upon the Lok Ayuktas to act swiftly and show results to the people so that they knew that their grievances and complaints had been thoroughly investigated. He also stressed that it was necessary to win public confidence and uphold the prestige and dignity of this office. The conference resolved that they should make recommendations to the government to make their offices more effective and convincing; the Lok Ayuktas should be open to the press and in the public and the government should set up a separate investigating agency to help Lok Ayuktas to function effectively.



CONCLUSSION:-

Though the Union and State governments are important to the individual citizen, yet he is more directly affected by local government administration. It is at this level that everyday public services like road maintenance, street lighting, traffic control, fire fighting, water supply, transport, building regulations and a host of other mundane essential community functions strike home to everyone. Since the citizens' dealing with local government are closer and more frequent, public administration at the local level becomes of critical importances; and since the institution of ombudsman, has been found useful by many countries at different levels of government, there has been a feeling that this institution may be of great help to the citizens at the local level also.

Ombudsman surveillance of local government activities even in Scandinavian countries is of recent origin. The jurisdiction of Swedish ombudsman over local government dates back to constitutional amendment in 1957. Investigation of grievances against elected local councils and councilors is excluded from the purview of ombudsman. The ombudsman can intervene only if procedures for administrative appeals have been exhausted and the local legislature failed to act. Notwithstanding these limitations, the Swedish ombudsman's role in the review of local government actions is substantial.

The idea of an ombudsman has been enthusiastically adopted in the United Kingdom in recent years. Interest in and support for the idea expressed in the early sixties, notably by the Wyatt Report was taken up by the Labour Party and the Parliamentary Commissioner with jurisdiction over Central government departments was instituted in 1967. The desirability of subjecting local administration to a similar form of scrutiny was recognized in the late sixties and another influential justice report (The Citizen and His Council-Ombudsman for Local Government, 1969) strongly argued the case for such a development. The White paper "Local Government in England" accepted that arrangements for investigating citizens' complaints concerning local government ought to be made. The proposal met with parliamentary approval and the Local Government Act, 1974 introduced an ombudsman for local government in England and Wales effect from 1 April, 1974.

The community must also be educated and awakened to its responsibilities in improving civic administration. The deterioration in municipal administration is largely due to weak leadership, factional politics and abuse of powers for promoting self-interest. These factors are by far responsible for alienating the citizens from government. Besides that, there is a tendency on the part of employees to become most secretive and contribute towards the apathy of the citizens. As against the practice in India, in the Scandinavian countries, any citizen has access to any file in the government.

Care must be taken in the selection of the ombudsman; he must bring to bear an impartial and judicious mind to the investigation and recommendations about the settlement of the problems. It goes without saying that he must be a person who will not yield to pressures under any circumstances. To discover such a person is a difficult task. Without a person of above qualities, it is futile to introduce the office of the ombudsman at the local government level or for that matter at any level of government.

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