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NECESSITY OF 'LOKPAL' IN INDIA- A WATCHDOG OF THE ADMINISTRATION

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Abstract:

"Every people get the government they deserve, if the people are well behaved the government official would become their true servants, otherwise they ride on their necks, not without a semblance of justifications."

- Mohan Das Karamchand Gandhi

INTRODUCTION

Any good system of administration, in the ultimate analysis, has to be responsible and responsive to the people. But history bears witness to the fact that more often, the impersonal bureaucratic system advertently or inadvertently tries to overwhelm the 'little man'. With the proliferation of administrative agencies affecting the life of a citizen in every conceivable aspect, the chances of administrative faults touching the rights of a person, personal or property, have tremendously increased. This has led to the never-ending search for an efficacious mechanism that can protect a person from administrative faults. The Search has produced the idea of 'Ombudsman' which in terms of utility means a 'watchdog of the administration' or 'the protector of the little man'. This institution was first developed in Sweden in 1809 and soon became a cherished importable commodity the world over. It is a unique institution which leads to an 'open government' by providing a democratic control mechanism over the powers of the state.¹ In the 21st Century almost all countries have witnessed change from laissez-faire to regulation. Under the weight of new economic policy state has assumed the role of a facilitator, enabler and regulator, Although democracies have evolved the safeguards like the fundamental rights, independent judiciary and the legislature. To protect the citizens from the arbitrary acts of the state, yet in the ordinary situations. This is not suggests that ordinary citizen has been a hapless victim of injustice in pre-democratic phase. History is witness to the fact that some or other mechanism has evolved to address the instances of injustice. Earlier period was more influenced by the 'benevolence'. But it was individualistic expression and systematic. A look into some of examples may be of much interest. In Indian context authoritative reference comes kautilya's Arthshasta²The state was paternal in character and benevolent in spirit according to him. The king should divide day and night into sixteen equal parts second part should be devoted to judge the complaints of the people. Holding daily courts to hear the complaints of his subject were among the most important duties of the king. Further, the king was not to act whimsically but to rule according to the dictate of Dharamshastras. 'Manusmriti' goes to the extent of allowing the subjects to abandon the worthless and misguided tyrant king³The 'Ombudsman' is an officer of the parliament who investigates complaints from citizens that they have unfairly is unjustified, seeks a remedy. With such an image, the modern day concept of 'Ombudsman' was first created in Sweden, which is known as the mother of the institution of Ombudsman. King Charles-XII of Sweden, impressed of the Turkish Office of chief justice, is credited for creating the institution of 'Ombudsman' in 1713.⁴ With Objective of observance of Laws and regulations

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and the power to prosecute officials for committing irregularities in performance of their duties.³ In 1719, this name was changed 'Justitiekansler' (Chancellor of Justice). But there was no change in responsibilities. The 'Ombudsman' of Sweden has the responsibility to see that the courts of Law and administrative authorities adhere to the constitution provisions and do not encroach on the fundamental rights and freedoms of the citizens. It is a unique institution which leads to an 'open Government' by providing a democratic control mechanism over the powers of the state. The chances of friction between a government official and a private citizen have multiplied manifold. In these circumstances, in the name of progress and development, individual justice against administrative faults may slip into the low visibility zone. Therefore the importance of an institution like Ombudsman to protect the 'Little man' against administrative faults by keeping the administration on rails can not overemphasized.

OMBUDSMAN AS THE CITIZEN'S PROTECTOR

The Ombudsman is a protector of citizen and guardian of his rights. He plays a important role because he is an independent and impartial authority to redress public grievances and acts as the watchdog of public morality. The overwhelming response evoked by the institution of 'Ombudsman' during the last five decades is probably unsurpassed by any other administrative institution during the entire 20th Century. Significantly, in spite of social, economical, legal, constitutional, political, administrative, demographic and ecological differences among various countries of the world, the institution of Ombudsman has fascinated them all to a lesser or greater extent. In the international arena, the interest in the Ombudsman institutions has found expression in the first international conference on Ombudsman at Edmonton (Alberta) in Sept. 1976. Which Succeeded indrawing thirty-nine Ombudsman from eighteen countries⁶ As Donold C.Rowat, a great champion of the Ombudsman institutions, says in short time there " has been a remarkable growth of worldwide interest in 'Ombudsman ship' and it is gaining wider and wider acceptance."⁷

IMPORTANCE OF 'LOKPAL' FOR INDIAN MASSES

Institution of 'Lokpal' is Indian version of the 'Ombudsman'. Background for such institution in india strikes similar chord, as in other countries. In fact, in developed countries felt need for such an institution, than by any account Indian conditions were much fertile. Frequent references in the Legislatures, statements by prominent citizens and increasing number of inquiries are pointer to this. Like other democracies, after independence, india as a state took upon itself the task of ameliorating living standards of its citizens and comprehensive development of the country. It led to an 'engulfing administration' Political Philosophy of that time further accentuated scope of the executive, which became all pervasive. In India, the idea of a independent authority for looking into citizens grievances really originated as a part of the search for solution to growing corrupt practices in the fifties.⁸ Controlling mechanisms like the legislatures, the courts grievances redressal machinery of the government and 'anti corruption' vigilance apparatus have their limitations . The legislature, theory aside, gets overwhelmed by the executive further, it can not handle individuals grievances in a country of magnitude of india. Paucity of time, tremendous workload and lack of expertise created a situation where executive started sharing legislature prerogatives, like delegated legislation. 'Exception' to the Rules and Regulations were provided for smoothening the implement ability. In framing of a law, the legislature cannot give all details and fill all gaps. For the courts, it is difficult to have judicial review of such gaps. It can be safely commented that the courts can only play 'Peripheral role in controlling the executive'.⁹ Other two agencies, grievances redressal machinery and 'anti corruption'. Apparatus were more or less part of the executive and vulnerable to pressures. With passing of years, Idealism of the independence movement was thinning and almost unchallenged power status was leading to ' self righteous' in the executive.

DEVELOPMENTS IN INDIA

20th Century was swept by the concept of ' Big Government' in the wake of the state undertaking the lofty missions of socio-economic welfare of the people. Developing countries were particularly more affected by this phenomenon. It led to 'all pervasive' political, executive and bureaucracy. Legislature were impelled to give 'Wide discretionary powers to executive'. Government organizations were rendering poor services and displaying attitude of arrogance. Mal-administration led to 'grievances' and 'corruption' there has been a feeling of unfair treatment, Lack of accountability and non-transparency.¹⁰ In modern state, all democratic actions are possible only through the instrumentality of bureaucratic organization. Yet

bureaucratic power, if it is not controlled effectively is itself destructive of democracy and its values.

The 'Ombudsman' idea is not an altogether new idea for the Indians. The Idea of a independent authority for looking into the citizens grievance really originated as a part of search for solution to the growing corrupt practices in the fifties. However, the 'Ombudsman' idea gain currency following the publication of Whyatt report (1961) and M.C Setalvad's, the then Attorney General of India, inaugural speech in the third All India Lawyers, Conference in August 1962 at New Delhi.. Late. K.M. Munshi, a constitutional expert and a parliamentarian while participating in the national debate on the need for a permanent Tribunal of Inquiry, in a statement to the press in feb., 1960 did not support the idea of such a Tribunal and instead favoured appointed of an 'Ombudsman' . Need for appointing a Parliamentary Commissioner Came up during a debate in Lok sabha on the 3rd April, 1963. Dr. L.M. Singhvi, Stressing the need of for setting up of an 'Ombudsman' institutions, justified it on the following grounds. That “ the institution of 'Ombudsman' would enable the citizen to effectively ventilate his grievances, that the question hour in parliament and writing letters to ministers are no substitute for it, that the available judicial remedy is not adequate as the courts are hide-bound by limitations of procedure and technologies, that through it parliament would effectively function in individual cases, and that it would ensure independent, impartial justice in matters of administrative excesses in individual cases. 11 Replying this the then law minister agreed to the point that such a proposal should be kept under consideration. The'Ombudsman' idea extensively investigated by the Administrative Reforms Commission and a definite suggestion was placed before the government in its interim report, dated October 14, 1966. On the basis of the recommendations, the government prepared the Lokpal and Lokayuktas Bill, 1968 and introduced it in parliament but eventually it was allowed to lapse. In 1971 the Bill was again introduced but was soon last in oblivion. In 1985 another Lokpal Bill was introduced in parliament which was restricted to offences punishable under the Indian Penal Code. In 1989 another Lokpal Bill was introduced in Parliament but this Bill also could not see the light of day. Once again in the the monsoon session of Parliament (1993) the government made a promise to appoint a Lokpal to Look into the charges of corruption against the government but it could not be passed. By introducing the Lokpal Bill, 1997 in the Budget session of the parliament, the United Front Government can be said to have kept the promise it had made about cleansing public life and injecting an element of accountability at the highest level. In 2003 ' Lokpal Bill' was again introduced in the parliament but failed to see the light of the day. New Bill was again introduced in 2005. This Bill proposes to include Prime Minister also within the orbit of Bill. Idea of Indian Lokpal has been surrounded by controversies from the day of its birth. The former President APJ Abdul kalam's statements over the inclusion of his office within the purview of 'Ombudsman' jurisdiction, at 8th. All India Lokayukta conference in Dehradun on 27 th Sept., President views failed to impress upon an major political party.¹²

A study of the Ombudsman operating in various countries, suggests that steps taken by all those countries that have in one way or another provide or an 'Ombudsman' for a similar watchdog over administration in pursuance of good administration. There are many country like India which are thinking for quite a long to have a 'watch – dog' over administration, but perhaps they themselves are afraid of ' being beaten by their own dog' and it it because of this fear the institution of Lokpal at National Level, is the victim of dissolutions, defects and deferment.¹³

CONCLUSION

The Traditional mechanism has not been able to deliver adequately. It is high time that the Lokpal is considered for investigation into 'Administrative faults' with basic aim of 'Redressing the Grievances'. It will not raise the guard of the political class. Dividends will be better public administration, more accountable bureaucracy and better faith in democracy.

REFERENCES

- 1-Massey, Dr. I.P. , Administrative law, Seventh edition 2008, Eastern Book Company, Luck now, P. 552.
- 2-Kumar , Umesh, Kautilya's thought on Public Administration, 1990, National Book Organization, New Delhi, P.22
- 3-Mishra, T.S. “ The Origin of the concept of Ombudsman in Ancient India” (Journal of Parliamentary information, September 1990) P.301.
- 4-Parmar, Mary, Lokayukta 2000, Reliance Publishing House, New Delhi P.3.
- 5-Gregory, Roy and Phillip, Righting Wrongs 2000 (IOS Press, Amsterdam), p-315
- 6-Girdhar B. Sharma, Implementation of Ombudsman Plan in India (1981), Ashish Publishing House, New Delhi P.1
- 7-D.C. Rowat, the Ombudsplan : Essays on the worldwide spread of an India (M.C and stewart Ltd) toronto,

P.7

- 8-Dhawan, R.K. , Public Grievances and the Lokpal (1981) Allied Publishers Pvt. Ltd., New Delhi, P.206
- 9-Jain, M.P. and S.N Jain, Principles of Administrative Law 2002, fourth edition, Wadhwa & co., Nagpur, P. 913.
- 10-Gupta, M.C. and R.K. Tiwari, Restructuring Government, IIPA, New Delhi P.25
- 11- Lok Sabha Debates Vol. XVI (April 3, 1963) cc 7556-58 and 5789-93
- 12- The Indian express and the Hindu dated 28th sept 2004, New Delhi.
- 13- Singh, S.S, “Lokpal Bill 1996, Missing Ombudsman” Politics India 1997, P.31

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