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Position of Ombudsman in India

YASH DHAWAN¹ AND VIDHI MARWAHA²

ABSTRACT

This paper elucidates one of the most discussed and debated offshoots of Administrative Law regime, that is, the establishment of the institution of Ombudsman. This paper is a result of secondary research methodology. This has been the topic of debate since India gained independence from the British rule. It is a well-established fact that countries like India need the backing support in its administrative set-up, the support that can very well be achieved by through the establishment of Ombudsman. Lokpal and Lokayuktas paved their way to the forefront as India's Ombudsmen. But it has been conclusively settled that the various shortcomings of the administrative wing of the government have prevented the concrete establishment of Lokpal and Lokayuktas. Except for illuminating the minds of the readers with the its origin and development in India, this paper also explicitly explains the role and need of Lokpal and Lokayuktas. This paper aims to analyze the development of the concept of Ombudsman in other countries with respect to the various intricacies involved in its establishment as a concept and development as an institution. The purpose of this paper is to figure out whether there are any inadequacies in the current administrative system with respect to the establishment of Lokpal as a control mechanism and how can they be rectified for the purpose of successfully appointing Ombudsman. It also throws some light on the difference in the administrative wing of India and countries like US and UK. This paper not only critically analyses the trends that lead to the inefficiency of the current administrative order but it also interprets the solutions given by various jurists in this regard.

Keywords: *Ombudsman, Administrative System, Lokpal and Lokayuktas, Inadequacies, Remedies.*

I. INTRODUCTION

The Before beginning with the in-depth study and analysis of the position of ombudsman in India, one must first start by understanding the basic foundation of the concept which would help the researcher and the readers in first understanding the meaning of the term '**Ombudsman**' and its relation and importance in the Administrative System of the country.

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To put it in layman's language, the term 'Ombudsman' in general refers to a public advocate who is appointed by the government and is provided with a high degree of independence in performing its functions, which is basically representing the interests of the general public in matters of maladministration and violation of rights of the citizens through investigation. This concept first originated in **Sweden**. It means an agent or attorney and was applied to Government's Chief Prosecutor.

While delivering a lecture at the Institute of Public Administration, Patna University, **Shri K. Hanumanthaiya**, the erstwhile Chairman of the Administrative Reforms Commission, New Delhi spoke on the topic of Ombudsman (Lokpal in relation with India) and said that the concept of Ombudsman is basically that of an institution that is kept independent of the executive, the legislature and the judiciary, i.e. essentially the three organs of the government. Such an institution has been made freely accessible to all the citizens who are aggrieved by the administrative actions or inactions (i.e. maladministration). If a citizen approaches the Ombudsman with a genuine complaint with regards to any maladministration then it becomes the responsibility of the latter to take up the case and investigate it himself without any making an expense on the complainant so that it works as an advantage for the general public over the judicial proceedings of the Courts that cause a lot of delay in providing justice to the aggrieved citizens.³

Therefore, in a nutshell, the duties of an ombudsman are in the nature of addressing and investigating complaints and resolving them. The suggested usual method of resolving such problems is through recommendations and mediation. The need for ombudsman can be understood by keeping in mind that it has to be made sure that there is no corruption or maladministration in the sphere of administrative branches of the government in order to maintain the prosperity of the nation and for the smooth and effective functioning of the administrative wing of the government. There is no denying of the fact that the biggest hindrance in the effective working of the administrative branches or organs of the government is caused by the prevailing corruption which ultimately causes a hindrance in the development of a nation. This problem can very well be tackled by the ombudsman as it plays a very crucial

³ Hanumanthaiya, K. Text of his speech on Lokpal, *The Journal of the Administrative Sciences*, January-December 1969, Volume XIV, Nos. 1,2, & 3, pp. 2-3.

"The concept of Ombudsman is essentially that of an institution which is independent of the Executive, the Legislature and the Judiciary. It is freely accessible to the individual citizen who is aggrieved by administrative action or inaction. If the citizen approaches the Ombudsman with a genuine complaint, the latter takes up the responsibility of fully investigating the case himself without any expense or onus of proof on the complainant. This is a great advantage for the citizen. It is here that this ready type of remedy steals a march over the delaying type of judicial proceedings of the Courts."

and a major role in eradicating the problem of corruption throughout the working of the administrative wing of the government. While discussing the concept of Ombudsman in relation to India, it has to be understood that the role of ombudsman is played by the Lokpal in India.

II. RESEARCH OBJECTIVES

The intention of the researcher is to provide an insight into the 'Position of Ombudsman in India' to the readers, keeping in mind both legislative and judicial outlook for a better understanding and in-depth research of the topic. It aims to bring the reader's attention to the historical background and its first introduction in the world and in India; and then also to the current position of the same with respect to various scholars and jurists considering different interpretations and detailed explanations and foster a thorough understanding of the different aspects involved in this institution of Ombudsman. The research will also be an analysis based on the critical study of the topic. Hence, the researcher will proceed through a practical approach to this topic, taking into account every primary and peripheral factor relating to it. Therefore, the primary objectives of this research paper would be –

- 1) To give an insight to the meaning and concept of Ombudsman.
- 2) To understand the various elements and organs involved in working of the Lokpal with respect to India.
- 3) To understand the current position of Ombudsman in India and creating a clear distinction with respect to other countries.
- 4) To understand the development in the institution of Ombudsman through a comparative study of various countries.
- 5) To analyze the relationship between Ombudsman, Government and the Citizens.

III. RESEARCH METHODOLOGY

The researcher will make use of quantitative as well as qualitative methods of research and analysis, although focusing primarily on qualitative means of exploration. The facts, interpretations, judgments, statistical records, legislative provisions cited in this paper will be extracted from various reliable web sources, commentaries, 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.

IV. RESEARCH QUESTIONS

1. What is understood by the term ‘Ombudsman’? How did it come into being in India and the world at large?
2. What is the requirement of this institution and how does it help in the administrative functioning?
3. What are the functions performed by Lokpal/Lokayukta?
4. How is the institution of Ombudsman (Lokpal/Lokayukta) in India different from other countries?
5. Are there any shortcomings or inadequacies in the current system of Control Mechanisms in India? How can they be rectified or remedied?

V. LITERATURE REVIEW

1. The book titled “**An Introduction to Administrative Law**”, written by **Neil Hawke**, published by Aditya Books, New Delhi, helped the researcher in understanding the basis of administrative law with respect governmental powers and functions and focuses on the efficiency of administrative control mechanisms. This book also helped the researcher in understanding the nature of unlawful administrative actions and the remedies available for the same. The author has indeed recognized the scope of powers available to the administrative officers, but he has also not forgotten to enlighten his readers with the effective control and solutions for the same. Therefore, he has very well achieved the objective of the book which was not only to provide a basic introduction to administrative law including the irregularity in the administrative actions, that is, maladministration, but he has also very clearly laid the procedure for the remedies available in this respect.
2. The book titled “**Administrative Law: Text and Materials**”, written by **Mark Elliot**, edited by Jack Beatson and Martin Matthews, published by Oxford University Press, very much helped the researcher in understanding the intricacies involved in the relationship of the judicial system and Ombudsman, specifically dealing with the issues related to the same in the past few years. This book also establishes the concept of Ombudsman in both political and legal aspects thus enlightening the readers with various different aspects of the concept of Ombudsman. Apart from this, it also explained the origin and development of the concept of Ombudsman in United Kingdom. It helped the researcher in elucidating the need and role of Ombudsman in the current research project.

3. Another book titled “**Administrative Law**”, written by **I.P. Massey**, published by Eastern Book Company, Lucknow. This book proved to be of great help to the researcher of the current research project. It helped in understanding the various developments in the concept of ombudsman throughout the past few years. It also helped in analyzing the standard working of this institution both at the Centre and States level. The author of this book has very well elucidated upon the topic of Ombudsman and its establishment in various countries like Sweden, US and England. He has also laid down the complexities involved in the establishment of this institution in India in guise of Lokpal at the Central level and Lokayuktas at the State level. While citing the issues, debates and development involved in the establishment of Lokpal and Lokayuktas in India, the author has also specifically dealt with the working of the same, thus helping his readers a great deal in understanding the origin and functions of this institution in India.
4. The commentary titled “**Principles of Administrative Law**”, compiled by **M.P. Jain** and **S.N. Jain**, published by Lexis Nexis is a really comprehensive commentary on the principles of administrative law that helped a great deal in understanding the in-depths of the administrative powers and actions and how the irregularity in the same can be remedied. It also elaborately dealt with the concept of maladministration and possible solutions for the same. The concepts that were explained with the help of enormous number of case laws proved to be beneficial in understanding the purpose and working of Ombudsman under the name of Lokpal and Lokayukta at the Centre and States level respectively.

VI. MEANING, ORIGIN AND DEVELOPMENT OF THE CONCEPT OF OMBUDSMAN

The concept of the organization of ombudsman originated in Sweden after which the “The Ombudsman Hysteria”⁴ influenced many other countries thus leading to the widespread of this concept in countries like England, Denmark, Finland and Norway. After this concept came into being in the developed countries, the developing countries also started experimenting the same by including this institution as their administrative wing. Countries like India, Mauritius, Guyana and Tanzania were the first ones among the developing nations to introduce the concept of ombudsman in their constitutions. Taking the example of Guyana, Chapter V of the Constitution of Guyana that deals with the executive branch of the government has also dealt with the office of Ombudsman as one of their administrative wings. Even Mauritius has devoted the whole of Chapter IX of its Constitution to the concept of Ombudsman. Section 67(1) and (4) of Chapter VI of the Interim Constitution of Tanzania Act No. 43 of 1965 and

⁴ Shukla, V.S., "The Ombudsman Hysteria," Supreme Court Journal, 1967, Vol. I, pp. 84-9

the Permanent Commission of Enquiry Act No. 25 of 1966 have provided for a Permanent Commission of Enquiry that performs the same function as that of Ombudsman.

This concept of constitutional ombudsman was first introduced by the erstwhile Minister of Law, Ashok Kumar Sen in the early 1960s. The unanimous recommendation that the institution of Ombudsman and such machinery must also be established in India was given by the Administrative Reforms Commission appointed in the year 1966.⁵ This commission was asked to study in particular the “Problems of redress of citizen’s grievances”. The interim report regarding the same was submitted to the then Prime Minister of India by the Chairman of the Commission through a letter dated October 20, 1966.⁶ The report recommended the establishment of an institution called as ‘**LOKPAL**’ which would be dealing with complaints and grievances of the citizens against the administrative acts of Ministers or Secretaries to Government at the Centre and the States; and another institution under the name of ‘**LOKAYUKTA**’, also in each State and at the Centre in order to deal with the issues of maladministration relating to other administrative officials.⁷ The Commission also suggested that an in-built departmental machinery must also be established within each ministry or department in order to provide redress against cases arising at the lower levels of administration which would help in reducing the burden on Lokpal and Lokayukta. Later, a bill⁸ providing for the wing of Ombudsman (under the guise of Lokpal and Lokayukta) was introduced in the Lok Sabha on May 9, 1968 by the then Minister of Home Affairs, Sri Chavan. Dr. L.M. Singhvi was the one to coin the term of Lokpal and Lokayukta as the machinery of Ombudsman in India for addressing the problems of public grievances.⁹ The Lokpal Bill was introduced in the parliament 8 times during the time period from 1968 to 2011 but it was not passed. In the year 2002, a commission was appointed to review the working of the Constitution of India recommended the establishment of the institution of Lokpal and Lokayukta. The commission was headed by Shri M.N. Venkatachiliah. He also suggested and recommended that the Prime Minister must be kept out of the ambit of this administrative wing. In 2005, the second commission recommended that the office of Lokpal must be established without any delay. It was chaired by Shri Veerappa Moily. Again, the bill was introduced in the Lok Sabha in the

⁵ The Commission was appointed on Jan. 5, 1966 by the President by a Government of India Notification No. 40/3/65-AR (P) and besides the Chairman Shri Morarji Desai, had Shri K. Hanumanthaiya (who became the Chairman later on), Shri Debbrata Mukherjee, Shri Harish Chandra Mathur, Shri H.V. Kamath and Shri V. Shankar.

⁶ Administrative Reforms Commission, Government of India, Interim Report on Problems of Citizen's Grievances, 1966.

⁷ https://shodhganga.inflibnet.ac.in/bitstream/10603/209431/11/11_chapter%204.pdf

⁸ Bill No. 51 of 1968. The Lokpal and Lokayukta Bill 1968.

⁹ Lokpal, , <http://www.legalserviceindia.com/legal/article-50-lokpal.html>

year 2011 but it could not be passed in the Rajya Sabha. Anna Hazare launched a social activist group called “India Against Corruption” at the same time and campaigned heavily in order to get the bill passed and he also prepared a model Bill and titled it “Jan Lokpal Bill”.

The following cutting from one of the most renowned newspapers would provide a very brief insight to the readers of this research paper with the debate and discussions regarding the establishment of the institution of Lokpal (India’s Ombudsman) going on since the past more than five decades.

VII. NEED FOR OMBUDSMAN IN INDIA

The administrative wings of the government all around the world have been bestowed with a lot of power which, keeping in mind the current ongoing modern age, is very easy to be taken advantage of. The reason behind this logic lies in the fact that these powers are all discretionary in nature which gives them the leverage of being abused very easily against any person or even against his interests.¹⁰ Therefore, the institution of Ombudsman is a must requirement as it has the ability to act as armour in case of any abuse of such powers, not forgetting the enlarging intricacies within the administrative systems of the world. It is one of those control mechanisms that prove to be a blessing to someone who has been stripped of his rights(s) at the behest of the so-called administrative officers.

Similar reasons were given by the protagonists of the institution of Ombudsman in India. This institution came to be known as Lokpal or Lokayuktas in India. After India had just gained independence from the British rule, the whole administrative structure of the newly formed government was overstrained with the pressure of recuperating from the effects of the Second World War. Moreover, the economic crisis and other natural calamities like floods and famines acted as ‘cherry on the top of this over-filled sundae’ in the guise of the administrative disability due the reasons mentioned herewith. The Constitution makers at the same time were so elated because of their success in the freedom struggle that they had extraordinarily ambitious plans with regards to the reorganization of the administration from its roots. Hence, the administrative officers were handed over extraordinary discretionary powers which give rise to a greater need of safeguarding the interest of the citizens from the arbitrary use of powers by the administrative officers. This was how the need of an institution as Ombudsman was realized by the Constitution makers of India. They did provide for control mechanisms in the form of Judiciary and other Adalats but were not able to curb atrocities against the citizens

¹⁰ Madam Justice Florence N. Mumba. "The Ombudsman: The Need for Protection and Control", in Norman Lewis and S.S Singh(eds.), 'Ombudsmen: India and the World Community', Indian Institute of Public Administration, British Council Division and British High Commission, New Delhi. 1995, p.37.

committed by the administrative bodies through their administrative officers.

Now, the question arises as to what is the need of such institution in the modern day? Why is it needed in India?

- For a country like India, it has become a universal fact that the origin of all kinds of administrative issues, for example, inefficiency of administrative offices and other problems, is corruption. The problem of corruption has been the main reason for the administrative inability to provide justice to the aggrieved persons. In the name of being one of the control mechanisms, it has rather become the enemy of the citizens. Maladministration resembles a termite which gradually disintegrates the establishment of a country and impedes an organization in the process of its functioning.¹¹
- Most of the anti-corruption organizations in India like the CBI or other vigilance units are not even completely independent in the course of their functions. The absence of independent working of these agencies requires the watch of an institution like Lokpal in India. It is the need of the hour as it has been observed in many scenarios that the aggrieved citizens have to report and intimate to the officer who himself is the accused person in the case or is in close connection with the actual accused person, hence most likely to be prejudiced against the aggrieved person.¹²
- Another problem that needs a solution in the form of setting up of a control mechanism is that of existence of effective bodies but they being immobilized. The issues are along the lines of excessive use of discretionary powers of the administrative officers. The point where the Indian Administrative set-up lacks is that the independent institutions like Lokpal and Lokayukta who are more efficient have been made merely advisory bodies to the higher administrative authorities. The sad part is that these institutions even after being independent are only available for the purpose of advising the government in broadly two ways – one, for the imposition of penalties or fines on any departmental officer, and the other, in order to prosecute an accused officer in the court of law. Strictly talking about our country, these advices given by Lokpal or Lokayukta are not even followed whenever the accused person is a senior rank officer or his associate.
- One of the most endangering issues with respect to the administrative functionality is that of accountability and transparency. The administrative agencies like the Central

¹¹ Lokpal and Lokayukta, , DRISHTI IAS , <https://www.drishtiiias.com/important-institutions/drishti-specials-important-institutions-national-institutions/lokal-lokayukta-ombudsman-upsc-governance-transparency>

¹² Lokpal, *supra* note 7.

Vigilance Commission and the anti-corruption branch of the police lose the confidence of citizens because of the fact that there is no accountability for the functions performed by these bodies. The officers of these agencies are not answerable to any higher authority which results in them taking decisions at their whims and fancies at the cost of denying justice to the aggrieved person. This, in turn leads to protecting the interests of the accused persons rather than sending them to jails. The officers accept bribes as if it is a business for them. Thus, there is a dire need for establishing a separate control mechanism in order to maintain the checks and balances among these agencies; a mechanism that would keep a close check on the working of the administrative bodies.

- Keeping the above-mentioned issues in mind, it can very well be established that there is an immediate requirement for an agency like Lokpal finding its essence in the concept of Ombudsman. The need of an independent institution like this provides for an effective solution to the ever-existing threat of corruption.¹³

VIII. STRUCTURE OF LOKPAL AND LOKAYUKTAS

The Lokpal is the institution that is set-up at the Centre and Lokayuktas are the ones that are established in all the States. The Lokpal is formed as a multi-member institution that is constituted by one chairperson and maximum 8 members. The prerequisite for a person to be the chairperson of this institution is that he should either have been the Chief Justice of India or he must have previously been appointed as a judge in the Supreme Court of India or he must have been “an eminent person with impeccable integrity and outstanding ability”, having “special knowledge and expertise of at least 25 years in the issues relating to anti-corruption policy, public administration, observance, finance including insurance and banking, law and management.” Half of the members of this institution will be judicial members and at least half of these seats would be reserved for the minorities like SCs, STs or OBC and for women as well. The essential requirement for the individuals to become members of this institution is that they should have either been the Chief Justice of any of the High Courts of India or they should have been a judge in the Supreme Court of India. The non-judicial member should be an eminent person with impeccable integrity and outstanding ability”, having “special knowledge and “expertise of at least 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.”¹⁴

¹³ P.13 Mukharji. "Grievance-man in the Indian Administrative System On Ombudsman. Lokayukta and Lokpal". in T.N. Chaturvedi and S.N Sadasivan (eds.). '(Citizen and Administration'. Indian Institute of Public Administration, New Delhi. 1984. p.92.

¹⁴ Lokpal and Lokayukta Act, 2013, , GKTODAY , <https://www.gktoday.in/gk/lokpal-and-lokayukta-act-2013/>

The Lokpal or Lokayuktas shall not be considered to be the members of the Parliament or of any of the State Legislatures. They are not allowed to be a part of any office of trust or for profit other than the office of Lokpal and Lokayuktas and they can also not be a part of any political party or represent it in its affairs.¹⁵ The offices of Lokpal or Lokayuktas are valid only for a fixed period of 5 years from the date of the commencement of the term. The individuals appointed as Lokpal and Lokayuktas are not eligible to be re-appointed. In case they want to resign from their post, they have to submit their resignation directly to the President of India.¹⁶ They may also be removed from their office by the President on the grounds of misconduct or inability.¹⁷

The term of office for Lokpal Chairman and its members is 5 years or till they attain the age of 70 years. The individuals are appointed by the president on the suggestion of a Selection Committee. This Selection Committee is made out of the Prime Minister who is the Chairperson; Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or a Judge designated by him/her and one eminent jurist. For choosing the chairperson and the members, the Selection Committee comprises of a search panel with a strength of at least eight people.¹⁸

IX. POWERS AND DUTIES OF LOKPAL AND LOKAYUKTAS

The following are the powers designated to the Lokpal and Lokayuktas as proposed in the Lokpal and Lokayuktas Bill, 2011:

“The Lokpal shall have powers of superintendence and direction over the Delhi Special Police Establishment in respect of matters referred by Lokpal for preliminary inquiry or investigation.¹⁹ The Inquiry Committees while conducting preliminary inquiry will have all the powers to of civil court under the Code of Civil Procedure, regarding attendance of witnesses, production of documents, receiving evidence, examination of witnesses, etc. The Lokpal shall also in certain cases have power to provisionally attach property for a maximum period of 90 days.²⁰ Lokpal can also recommend to the Central Government transfer or suspension of any public servant who adversely affects preliminary inquiry or is likely to tamper with or destroy

¹⁵ Section 4 of the Parliamentary Commission (Ombudsman) Act, 1962

¹⁶ Ibid, Section 5 proviso clause (a)

¹⁷ Sarojini Sharan, *OMBUDSMAN IN INDIA*, 32 INDIAN J. POLIT. SCI. 158–174 (1971).

¹⁸ Salient features of Lokpal, Lokayuktas Bill - The Hindu, , <https://www.thehindu.com/news/national/salient-features-of-lokpal-lokayuktas-bill/article5474256.ece>

¹⁹ S. 25, 26, 27 of the Lokpal and Lokayuktas Bill, 2011.

²⁰ S. 29 of the Lokpal and Lokayuktas Bill, 2011.

evidence.^{21,22}

According to the insights provided by various articles regarding the establishment of Lokpal, the Lokpal shall have the power of superintendence over all researching organizations or investigating agencies including the CBI and other state and central vigilance commissions with regard to the cases alluded to them. According to the Lokpal Act of 2013, the Lokpal can summon or question any local official, i.e. a public servant if there exists a prima facie case or evidence against that public servant, even before an investigating agency, (for example, vigilance commission or CBI) has started with the investigation. Any officer of the CBI examining a case alluded to it by the Lokpal will not be transferred without the prior approval of the Lokpal. It is required that any such investigation against an officer must be completed within a period of six months. Notwithstanding, the Lokpal or Lokayukta may permit extensions with regards to this time limitation and may grant an extension of six months at a time provided that the reasons for such extensions are given in writing. Special courts will be established to conduct trials on cases referred by Lokpal.²³

X. DEVELOPMENT OF OMBUDSMAN IN OTHER COUNTRIES

➤ The United States Of America

Even though the concept of Ombudsman has very well evolved in the United States, but it has still not been able to break into the administration of all the states except for the three states of Hawaii, Nebraska and Oregon with respect to the local governmental bodies and administrative agencies. Even in a developed country like the US, several bills have been introduced in the Congress Sessions since the year 1963 for the establishment of an agency along the working lines of the concept of Ombudsman but somehow it could never be passed so it never became an act and remained a mere concept. The reason that a very renowned jurist, Gellhorn has given is that the members of the Congress in the US feel that establishment of such an agency would only end up in snatching away their powers and the status that they have attained being the officers of the administration and that these officers consider it their sole prerogative to represent their constituencies and handle the grievances of the people. Despite every one of these issues engaged with the foundation of Ombudsman, there are sure Congressional organizations and other grievance cells, similar to the police review boards, that release their obligations along the ideals of ombudsman.²⁴

²¹ S. 32 of the Lokpal and Lokayuktas Bill, 2011.

²² Subhashini, *Institution of Ombudsman-A Legislative and Judicial Outlook*, ACADEMIKE (2015), <https://www.lawctopus.com/academike/institution-ombudsman-legislative-judicial-outlook/>

²³ Appointment of Lokpal - INSIGHTS, , <https://www.insightsonindia.com/2019/03/19/appointment-of-lokpal-2/>

²⁴ Gellhorn, *When Americans Complain*, 1966

➤ **England**

As they continued looking for a progressively powerful institution to control the organization, the consideration of the administrative legal advisors or lawyers has been pulled in by the Scandinavian establishment of Ombudsman. This foundation was established in Sweden in the year 1809. At that point Finland embraced the foundation in 1909. Denmark and Norway picked up the concept of Ombudsman in 1953 and 1963 respectively. New Zealand became the first nation in the Commonwealth to receive the establishment in 1962. Now England has also followed the suit and has established the institution of Ombudsman which came into force in the year 1966. It received the Ombudsman framework in 1966. Taking into account the way that India may soon follow this trend and opt for the institution of Ombudsman, it may be enlightening for us to have some thought with respect to how the framework has been working in England. The reports of the British Ombudsman for the first year of his working (1967) are presently accessible right now we can, from these reports, draw out the notable qualities of the workplace just as the issues which have emerged over the span of its working.²⁵

The post of parliamentary ombudsman was set up in 1967 in the Parliamentary Commissioner Act as another sort of open authority who could investigate complaints of the citizens about maladministration by government authorities. The statutory office holder was given statutory powers to have access to all the required information relating to a case, to require the participation of witnesses and outright benefit to protect his reports, hence maintaining the privacy of each case in particular. What 'maladministration' included, in the expressions of the cabinet minister Richard Crossman while presenting the enactment in 1966, was: "bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on".²⁶ At the hour of its presentation the idea was assaulted as a protected development which couldn't be accommodated with clerical responsibility to Parliament, and which usurped a MP's customary job of seeking after the complaints of constituents. Incompletely as a response to such analysis, the new plan necessitated that all objections were to be diverted through MPs who could give them to the ombudsman, the 'MP filter'. The Ombudsman is an arrangement made by the Crown under the provisions of the Parliamentary Commissioner Act 1967. The Act presently indicates a seven-year term.²⁷ Practically speaking, an open competition is held for the post, and a selection committee or the so-called interview panel makes the final decision

²⁵ Jain, M.P. "THE FIRST YEAR OF OMBUDSMAN IN ENGLAND." *Journal of the Indian Law Institute*, vol. 14, no. 2, 1972, pp. 159–186.

²⁶ HC Deb 18 October 1966 vol 734 c 51

²⁷ Subsections 2A and 2b of the Parliamentary Commissioner Act 1967, as inserted by Schedule 8 of SI 2006/1031

relating to the selection of an individual for this post. The chairman of the Public Administration Select Committee partakes in the procedure and the panel has an external evaluator from the Public Appointment Commissioner's office to ensure that the appointment is made fairly according to the Commissioner's Code of Practice.²⁸

➤ African Countries

Tanzania turned into the first African nation to set up the institution under the name of the Permanent Commission of Enquiry (PCE).²⁹ This followed the report of the Presidential Commission on the Establishment of a One Party State in 1965 (the Presidential Commission) which prescribed the foundation of the PCE as a safeguard against the arbitrary use of powers granted to this officer.³⁰ The PCE started work in 1966 and is at present managing more than 3000 complaints per year³¹ – more per head of population than for some other foundation of its sort on the continent.³²

The following African nation to set up the workplace was Zambia. The 1973 Constitution made arrangement for a Commission for Investigations (CFI) which started working in 1974. An average of 550 cases in a year are managed, although budgetary and staffing issues keep on preventing a sufficient assistance being given to the general population and numerous cases are not discarded for various years.³³ In addition to, the absence of transportation facilities has made it impossible for the CFI to work outside the fundamental urban regions.³⁴

➤ China

China even before the advent of Maon Civilization had focused on establishing an office which circled around ombudsmen. In 221 BC, the Tsin Dynasty established an office called as "Control Yuan " which is still present in Taiwan³⁵. There are four different institutions in different areas including one in Mainland China also known as the Ministry of Supervision, the other one in Hong Kong also known as the Ombudsman, the third in Macau which is the commission against Corruption and last but not the least Control Yuan, in Taiwan³⁶.

²⁸ Oonagh Gay, "The Ombudsman- The developing Role in the UK", The Parliamentary and Constitution Centre, House of Commons Library.

²⁹ P. M. Norton, "The Tanzanian Ombudsman", (1973) 22 I.C.L.Q. 603-631

³⁰ Government Printer, Dar es Salaam, 1965, p.32

³¹ Annual Reports of the Permanent Commission of Enquiry.

³² John Hatchard, *The Institution of the Ombudsman in Africa with Special Reference to Zimbabwe*, 35 INT. COMP. LAW Q. 255–270 (1986).

³³ Annual Reports of the Commission for Investigations, Zambia. In the 1982 report, the Investigator-General reported that there were still eight cases outstanding which dated back to 1975.

³⁴ Hatchard, *supra* note 31.

³⁵ <https://shodhganga.inflibnet.ac.in/bitstream/10603/183769/6/05%20chapter%201.pdf>

³⁶ <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1958&context=jil>

XI. CONCLUSION

After the in-depth analysis of all the issues and intricacies involved in the establishment of the concept of Ombudsman not just in India but in the whole world, it was realized that the various political and legal difficulties that act as hurdles cannot be disregarded. Talking about its establishment in India, when compared with other countries of the world, especially the developed countries, there are several differences in the political, social and geographical conditions that have to be overcome in order to create a much better and more impactful environment for the establishment of the institution of ombudsman. It is because of these differences that it has become difficult for a developing country like India to successfully establish an institution of this sort. There are certain keynotes that have to be remembered while implementing the ideas of ombudsman:

Firstly, it has to be kept in mind by the law-makers that this concept has proved to be beneficial only in geographically small countries as of now. Therefore, it becomes really very difficult for a vast country like India to overcome the obstacles involved in the establishment of ombudsman. India has a lot of villages and for an institution like this it becomes almost impossible to rectify or even address the problems of aggrieved persons.

Secondly, the fact that the Indian Constitution is a federal constitution, unlike the ones in New Zealand or U.K., the institution of ombudsman does not allow the citizens to enforce their rights but it can only advise the government as to the course of action depending on case to case, which would in turn make the citizens believe that it is an inefficient institution and would still prefer to go to courts rather than approaching ombudsmen.³⁷

Thirdly, a country like India has experienced corruption in all the levels of hierarchy of government institutions. Therefore, an institution like this first needs a favorable working environment in order to impart justice to the aggrieved persons. This is what the Lokpal has been trying to accomplish. The battle against the roots of corruption in the administrative set-up is something that has limited the scope of ombudsman in this country; for the purpose of which there are certain lacunae and loopholes in the administrative wing that need to be rectified.

Fourthly, the conflict between the various political parties in India is the major reason why Lokpal hasn't been established till date. More than six years have passed since the "Lokpal and Lokayuktas Act, 2013" was passed, but there hasn't been any appointment of Lokpal and only 16 states have been successful in the establishment of Lokayuktas. The reason being the

³⁷ subhashini, *supra* note 20.

political influence as the committees in relation with appointment of the same are all filled with the members of political parties, thus signifying that the requirement for choosing members which says that the person must be an “eminent person or a person with integrity” has failed badly as there is no criteria to decide the perfect candidate for the same.

“It is in the view of the widespread corruption and maladministration that even the establishment of many ombudsmen would prove to be a failure.”³⁸ In this regard, Justice P.B. Mukherjee exclaimed that soon after the establishment of the institution of Ombudsman there will be a need for establishing another similar institution for the governance of the existing Ombudsman, i.e. the Lokpal and Lokayuktas.³⁹ One of the fundamental purposes behind the establishment of the foundation of Lokpal could be the way that the judiciary has been rejected from coming within the scope of the Lokpal. Subsequently, the established support in the nature of a constitutional backing that is required by an evolving institution like Lokpal is missing.⁴⁰ Apart from this transparency must be maintained in the appointments made in Lokpal and Lokayuktas in order to gain the confidence of the citizens in this institution. Several accountability mechanisms must also be resorted for so that the rate of corruption at least inside the administrative departments of the government reduces. The establishment of Lokpal in itself isn't sufficient. The legislature should address the issues depending on which individuals are requesting for a Lokpal. Just adding to the quality of insightful organizations will build the size of the administration however it will not really improve the governance and administration. The slogan adopted by the government of “less government and more governance” ought to be followed in letter and soul. No outside inconvenience will do, except if every community worker turns into a principled worker.⁴¹

³⁸ Najmul Abedin, *The Ombudsman in developing democracies: the Commonwealth Caribbean experience*, INT. J. PUBLIC SECT. MANAG. (2010),

<https://www.emerald.com/insight/content/doi/10.1108/09513551011032464/full/html>

³⁹ The Hindustan Times Weekly, 27th November 1966. Justice Mukherjee in the last lecture in the Sir Chumanlal Setalwad Memorial Lecture Series, under the auspices of Bombay University

⁴⁰ Lokpal and Lokayukta, *supra* note 9.

⁴¹ Lokpal, , <http://www.legalserviceindia.com/legal/article-50-lokpal.html>