



ADMINISTRATIVE REFORMS COMMISSION

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# REPORT OF THE STUDY TEAM

## REDRESS OF CITIZENS' GRIEVANCES

AUGUST 1966

STUDY TEAM ON  
REDRESS OF CITIZENS'  
GRIEVANCES

REPORT

SUBMITTED TO  
THE ADMINISTRATIVE REFORMS COMMISSION

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STUDY TEAM ON  
ADDRESS OF CITIZENS  
GRIEVANCES

**Important**

*This is a Report of a Study Team appointed by the  
Administrative Reforms Commission. The Report of the  
Commission on the same subject is a separate document.*

REPORT

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THE ADMINISTRATIVE REFORMS COMMISSION

AUGUST 1986

GOVERNMENT OF INDIA  
ADMINISTRATIVE REFORMS COMMISSION

*New Delhi*  
31st August, 1966.

To

The Secretary,  
Administrative Reforms Commission,  
Government of India,  
Patel Bhavan,  
Parliament Street,  
*New Delhi.*

Dear Sir,

I am sending herewith the report of the Study Team, appointed to investigate the problem of Redress of Citizens' Grievances for the consideration of the Commission.

*Yours faithfully,*  
Sd./-

(CHARU C. CHOWDHURI)  
*Chairman of the Study Team.*

## REPORT OF THE STUDY TEAM ON REDRESS OF CITIZENS' GRIEVANCES

The Study Team appointed to consider the problem of the redress of Citizens' Grievances have the honour to present the following Report for the consideration of the Administrative Reforms Commission.

1. The Study Team was asked, in regard to the subject allotted, to ascertain facts, locate the principal areas, examine solutions of the problems and suggest such of them as they would recommend for the Commission's consideration. The subject allotted to this Study Team was the problem of the redress of Citizens' Grievances with reference to :

- (a) the adequacy of the existing arrangements for the redress of grievances, and;
- (b) the need for the introduction of any new machinery or special institution for the redress of grievances.

2. The Study Team began its work in the last week of May and held its first meeting on May, 24, 1966, at which Mr. Debabretha Mukherji, a member of the Commission, explained the different aspects of the problem. In the short time available, it has not been found possible to ascertain facts at first hand by calling witnesses or issuing questionnaire to the public or to the Government Departments. To do so would have required not only much more time but also a good deal of urging and prodding to elicit replies or information. A simple query for instance made in the first week of June of a Government Department as regards the terms of appointment of the Vigilance Commissioner, his functions and how the new system introduced was working has remained unanswered up till now. All that the Study Team in the circumstances could do was to depend on published materials and make their own deductions.

3. The Grievances of Citizens which the Study Team have been asked to deal with are, of course, grievances against the government, its acts and policies. Such grievances may be general or common to all or any section of the community. Shortage of food, rise in prices, over-crowding in transport services, late running of trains are instances of such grievances which do exist and find expression in widespread disturbances that occur from time to time. The Study Team is not, however, concerned with such general grievances. What the Study Team is concerned with are those grievances which the citizens may, as individuals, have against the government on account of any act or omission on its part affecting them individually.

4. The activities of the Modern State are no longer confined, as in old days, to the maintenance of law and order only. The State nowadays undertakes numerous activities for the welfare of the community as a whole and for the purpose of achieving its goal, the State has come to control to a large extent the daily life of the citizens and the citizens have to approach the Government departments for orders, permits, licences and so on before they can engage in any business or work of their choice. The area of government control is vast but may be considered under the following heads :—

A. *Controlled activities* : Under this head may be mentioned those activities for which a citizen has to obtain permission or licence from the Government before he can engage in any of them. If, for example, a citizen wants to set up an industry or expand, one has to obtain an industrial licence from the government. A person has to obtain an import or export licence before he can take up the business of import or export. Licences are required for running transport services, passports and foreign exchange permits for travelling abroad.

B. *Controlled Commodities* : The supply and distribution of commodities considered essential to the life of the community and the prices at which such commodities may be sold are controlled by the State. Any person desiring to trade, for example, in foodstuff, drugs, building materials etc. has to get the approval and abide by the directions of the Government.

C. *Welfare* : The State undertakes various welfare services such as health, sanitation, education and directly or indirectly affects the citizens. It runs hospitals, schools and colleges and grants financial aid to such institutions run by private parties. The government also undertakes relief work in times of distress. Postal service, State Transport by railway, aeroplane or motor buses may also be included under this head.

D. *Contractual relationship* : Citizens enter into contractual relationship with the government, as for instance, supply of service e.g., contracts for buildings or supply of goods. Although such contracts are governed by the terms of the contracts, the Government Departments have a large say in the distribution of contracts and seeing to their satisfactory performance.

E. *Acquisition and requisition of property* : Private property is liable to be acquired or requisitioned for public purposes. Although elaborate procedure is laid down for the purpose, much depends upon the discretion of the Government Departments concerned. In fact, the famous Crichton case related to the derequisition of property taken over by the Government.

F. *Other activities* : Besides these, the State has undertaken various social services, such as Banking, Insurance, Employee's Provident Fund etc. These more than any other are likely to affect the lives of ordinary citizens in their daily lives.

These are some of the areas which may be called the horizontal ambit of governmental activity where the problems of the redress of citizen's grievances may arise. Orders affecting the citizens in these matters are made by the various ministries or departments of the Government in charge of particular matters.

5. There is, however, another area or rather a cross section of the above area which may be called the vertical area. Orders are not always passed at the highest level by the officials of the secretariat on their own or under the direction of the ministers. Orders are more often passed, particularly in the States by subordinate officials spread over throughout the country. Orders may be passed by district magistrates, sub-divisional officers and even by officials of lower rank in the mofussil, e.g., by block development officers. So far as the Union Government is concerned, orders, are, however,

passed mostly at the Secretariat level at the headquarters, except in a limited number of cases where the officials are stationed at State capitals. In considering whether there should be any outside authority who can deal with complaints of citizens, this aspect of the matter should be kept in mind, whether the authority should be empowered to deal with orders passed at the highest level or also at lower levels by officials in the mofussil.

6. The powers that are exercised by the government departments or their officials may be statutory, under authority conferred by statutes or instruments of delegated legislation. They may also be exercised under pure executive instructions, some statutes or statutory instruments provide for redress against illegal or wrong orders by way of appeal to higher authorities from orders passed by subordinate authorities. Some others do not provide for any such redress. A few illustrations will suffice. Under the Imports and Exports Control Act or the Essential Commodities Act and various orders passed under this Act, no remedy is provided under statutes or the rules against orders refusing or cancelling licences or permits. On the other hand under the Customs Act and the Excise Acts, there is a hierarchy of officials who can revise or set aside orders passed by subordinate officials. Some of the statutes *e.g.*, Land Acquisition Act and the Patents and Designs Act, provide also for appeals or references to courts of law. There may therefore be 3 kinds of orders by which citizens may be affected :

- (a) Orders against which remedies are provided by the statutes governing the particular matter;
- (b) order against which no such remedies are prescribed :
- (c) orders against which appeals or references may be made to court under the relevant statutes.

7. Where a public officer is vested with any statutory duty, he can be compelled to do his duty or restrained from doing anything in the purported performance of such duty by the court. But the court's jurisdiction extends only to directing him either to exercise his power or to refrain from doing so in a particular manner. The court has no jurisdiction to direct him to do his duty in any particular way or to interfere with his discretion. Unless the Constitution or any statute has made any issue justiciable, the officer's discretion is absolute; the court's duty will be only to see that the proper procedure or the rules of natural justice are followed.

8. Orders passed by the officials may be impugned on various grounds. Corruption may be alleged, the officer concerned may be said to have acted under the influence of bribes, undue pressure or influence or nepotism. He may be alleged to have acted illegally on a misinterpretation of law or unreasonably or arbitrarily in the circumstances. It is obvious that a person who has succeeded in obtaining an order in his favour whether by fair means or unfair will never come to complain. The persons who have been disappointed will do so. If statutory remedies are available, they can have remedies. In other cases although the officers concerned may be punished or otherwise dealt with, it may not be possible to interfere with the orders themselves.

9. In a parliamentary democracy the legislature is the forum for raising grievances of citizens. Indeed, the fundamental principle of voting supply is that citizens' grievances must be considered before supply can be granted

to the executive government. In debates on demands for grants therefore, all sorts of grievances may be raised by cut motions. There are also other parliamentary methods of raising grievances. Indeed it is the duty of the members to represent his constituents and to raise their grievances in the legislature and have them redressed. One of the important methods of raising the constituents' grievances is by putting questions to ministers about any case of maladministration or abuse of power. Questions of police excesses and tortures have been raised in parliament by questions. There are, however, certain limitations to this method of raising grievances. Firstly, a member can put a limited number of questions during a session. Secondly individual cases cannot be raised unless they involve any question of general policy. Consequently members do not usually put questions unless issues of grave political implications are involved. Questions are put primarily for eliciting information and when the ministers reply, requests for action may be made and undertakings from the ministers obtained. Questions may also, be put for written answers. Members may also take up any matter with the ministers privately. Members freely adopt these two methods for having the grievances of their constituents redressed. There is also the debate known the half an hour debate. If the replies or response to any member's questions are not deemed satisfactory, the member can raise the matter in a short debate where time is available for debating any such question fully.

10. Other Parliamentary methods are calling attention notice and adjournment motions. As with questions, or more than that, these methods can only be adopted if grave questions of public policy or administration are involved. As an adjournment motion is treated as a motion of censure, the government is always on the defensive and very little by way of redress can be expected out of these methods. There is a committee of petitions in every legislature. Individual grievances may be raised by petitions to the legislature. Petitions are referred to the committee of petitions which may suggest remedial measures. But as the Indian legislatures have no power to grant any relief, petitions to parliament do not serve any purpose except publicising grievances.

11. *Ministerial responsibility* : It is fundamental in a parliamentary democracy that ministers are responsible to the legislature for the acts of permanent officials. It is for this reason that criticism of maladministration is directed against the ministers concerned and ordinarily the names of permanent officials are not allowed to be mentioned in the House. Not because they are not before the House to defend themselves but because it is the minister who is primarily responsible, for the acts of his officials. If the officials have acted in accordance with the instructions, general or particular, of the minister or under his orders, it is the duty of the minister to defend them in the House. If his defence fails and the House disapproves of the action taken, the minister has to resign, no blame attaches to the permanent officials. In the Crichton Down case, Sir Thomas Degdale, the minister concerned, resigned although he was not personally responsible for the acts of the permanent officials whose action was disapproved. On the other hand, if the official acted against the instructions of the minister or corruptly or negligently, no duty is cast upon the minister to defend him and in such a case it is the official who is punished and not the minister. In India, there is some misapprehension about ministerial responsibility. When there was an accident in a railway, the Late Mr. Lal Bahadur Shastri, the then Railway Minister, resigned, Mr. S. K. Patil offered to resign when

there was recently an accident in Bombay. If a railway pointsman is negligent in his duty, the minister is under no duty to defend him and he is under no obligation to resign in such circumstances. If an official takes bribes and passes an improper order, the official is punished. The minister does not resign unless he is himself involved in the transaction.

12. It is the legislature which has the right and the duty to keep the ministers straight. If a minister fails in his duty or acts improperly, he is liable to be removed by the legislature. Any Chief Minister supporting a corrupt colleague will do so at his own risk. If any enquiry is necessary for establishing the guilt or innocence of a minister, the House has ample authority to appoint or to require the government to set up a Commission of Enquiry. Such commissions have been appointed in England and also in India e.g., Porter Tribunal involving Mr. A. J. Thomas, Lynskey Tribunal involving a junior minister, Mr. Belcher Denning Inquiry in which Profumo was involved and in India, S. R. Das Commission and Chagla Commission. Such inquiries are directed when facts are placed before the House by responsible members who take the responsibility of their statements and are in a position to substantiate their charges. Any authority intervening between the ministers and the House who would act on complaints made by members of the public and undertake inquiries would make the position of ministers intolerable.

13. Another aspect of the matter which has to be borne in mind is that under the Indian Constitution, the ministers are collectively responsible to the legislature for all administrative acts of the government. No minister is individually responsible. If any act done under the authority of a minister who may be in charge of the department does not have the approval of the Council of Ministers, the minister in charge has of necessity to be dismissed or required to resign. If the Council of Ministers take the responsibility, the House can get rid of the ministry if it does not approve of the act.

Then again under the Constitution ministers are only advisers to the Head of the State who is responsible for all executive acts. No minister has any authority to pass any executive order. All orders are passed under the signature of the executive officers concerned although under the rules of business the Head of the State authorises the executive officers to act in accordance with the direction of the ministers as if they have been issued by the Head of the State himself. The Constitution also provides that no court can inquire into the question as to what advice has been tendered by the ministers to the Head of the State. The notings made by the ministers on the files on which the executive officers are authorised to act are in law advice tendered to the Head of the State. Any authority investigating into the orders passed by a minister will be acting against the spirit of the Constitution.

The position in England is somewhat different. The ministers are secretaries to the Crown and they are entitled to pass orders under their own signatures. Besides, there are matters in which the ministers act not as members of the Council of Ministers but themselves exercise prerogative or statutory powers or act as tribunals supervising the acts of local or other authorities. For example, the Minister of Health or the President of the Board of Education is constituted a corporation sole under the relevant Acts. Any act performed under such statutory power is quite different from an act of a minister under the Indian Constitution.

14. *Vigilance Commission* : The Central Government and most of the State Governments have set up Vigilance Commissions to enquire into charges of corruption among officials. These commissions have no statutory basis but have been set up by executive order and perform the duties that were usually performed by the anti-corruption departments. The complaints that are investigated are complaints of corruption not so much against any act of the official as against the officers concerned. But the enquiry by the Vigilance Commission may relate to a particular order or a particular transaction. Besides, the Vigilance Commission having been set up by the Executive Government, it is not an independent body; it makes its reports to the Government and makes recommendations for action (including prosecution) and the government takes suitable disciplinary or other action against the officer in accordance with the advice of the Vigilance Commission. Some kind of independence has been attempted to be conferred upon the Vigilance Commission by making (by voluntary abnegation of powers by the executive government) his dismissal dependent upon an address by the legislatures. This, however, has no constitutional guarantee. He cannot also under the terms of the appointment accept any employment under the government after retirement from the post of the Vigilance Commission. In the absence of constitutional or even statutory recognition of his position, he may act at best as a department of the government to check corruption.

15. To recapitulate, the grievances of citizens may relate to :

- (a) Orders passed in the exercise of statutory discretion—
  - (i) against which remedies by way of appeal or application to higher authorities are prescribed;
  - (ii) against which no such remedies are prescribed;
- (b) Orders passed in the exercise of executive power in dereliction of duty or abuse of power either;
  - (i) being influenced by corrupt motive, or;
  - (ii) merely out of error, negligence, inefficiency or even perversity.

This class (b) of orders has been described in the whyatt to Report as Accusatory in character "in the sense that the individual is accusing a department of committing some fault in the exercise of its administrative powers."

16. Having cleared the ground we shall now take up the question of the redress of grievances, so far as orders of category (a) mentioned in the previous paragraph are concerned, the complaints would be that the discretion the officer has exercised is not proper in the circumstance due to error of law or error of judgment and what is desired is the substitution of another discretion for the discretion of the officer. There may not be any accusation of negligence or corruption. As has been stated many of the statutes conferring discretionary powers on officials provide for the correction or revision of orders by higher authorities or tribunals. There no such remedy is provided, the Study Team is of the opinion that such formal remedies should be provided, except in cases where any question of policy is involved. There is a case in respect of this subject matter for the Constitution of administrative tribunals; but that is a matter which is not within the reference to this Study Team.

17. So far as orders of category (b) are concerned, those falling within clause (i) will be within the jurisdiction of the Vigilance Commission but there is no authority which can take cognisance of complaints falling within clause (ii). It should be pointed out at the outset that so far as these orders, whether within clause (i) or clause (ii), are concerned, there will be no scope for redress of the grievances. The Vigilance Commissioner cannot override any order of an executive authority. Even if there is set up any authority to take cognisance of complaints, he cannot be given the power to revise the orders of executive authorities. That would bring the administration to a standstill. Indeed the institution of Ombudsman nowhere has any authority to revise the decisions of executive authorities. It can criticise and point out defects and suggest remedies. Even where remedies are suggested, it may not be possible always to accept the suggestions. In most cases, the interest of the third party who may be quite innocent may be involved. If a person, for example, complains of inordinate delay in having his matter attended to and the authority set up to investigate the complaints of citizens finds the complaint to be justified, he may ask the department concerned to expedite matters. In such a case, of course, the complaint would get redress. But where for instance, a permit has been given to a person in preference to the complainant, it may not be possible to give any redress to the latter unless there is fraud or collusion on the part of the former.

18. There is an ultimate source of remedy by way of petitions for writs under Art. 226. As has been already stated, the court cannot in petitions under Art. 226, substitute its own discretion for the discretion of any authority, unless the issues are justiciable. In most cases they are not; they depend upon what is known as the subjective opinion of the authority concerned. Jurisdiction under Article 226 can only be exercised in such cases if the procedure laid down has not been followed or rules of natural justice have been violated. Besides, the exercise of writ jurisdiction is beset by technicalities and further, going to court means expense and delay which keep ordinary citizens away from law courts. There is therefore scope for establishing an authority which can go into the grievances of citizens but, as has been already indicated, the scope of inquiry by such authority will be extremely restricted one only in relation to orders classified under clause (b)(ii) in paragraph 15. And even then, the scope of the authority will be only to draw attention to irregularities and not to grant redress.

19. There is in some European countries an institution called Ombudsman which enquires into complaints made by citizens against mal-administration of the government departments. The powers and duties of and the procedure followed by the Ombudsman in different countries are, except for minor details, more or less the same. We shall take here the case of the Swedish Ombudsman because it is the oldest of such institutions.

The Swedish Ombudsman is an officer of parliament elected for a term of four years by a College of electors which is chosen by and from the members of Parliament. He may be re-elected. In fact, it is understood that the Ombudsman once elected should be prepared to serve at least two terms.

On the other hand, it is also understood that an Ombudsman should not serve too long; three terms seem to be the conventional limit. The Parliament has the right to dismiss an Ombudsman in certain exceptional

cases. An Ombudsman is usually appointed from among judges of the Court of Appeal and receives a remuneration equal to that of a judge of the Supreme Court. He is independent not only of the executive government but also of Parliament itself. He himself decides which case he would investigate. Even Parliament cannot require him to investigate any case. The Ombudsman is assisted in his work by a Deputy Ombudsman elected in the same way as the Ombudsman and six jurists and the necessary office staff appointed by the Ombudsman.

Any citizen can make a complaint of maladministration before the Ombudsman. The Ombudsman can take cognisance of a case not only on such complaints but also can act *suomotu* on information received by him otherwise, even on newspapers reports.

The jurisdiction of the Ombudsman for civil affairs (there is an Ombudsman for military affairs also in Sweden) known as Justice Ombudsman or JO in short, extends over civil servants, judges administrative tribunals but not over ministers. The Ombudsman has no authority, however, to change the decisions of judges or administrative tribunals. In order to understand the nature of the Ombudsman two fundamental principles of Swedish law have to be borne in mind one, every public officer including judges are liable to penal liability: if a judge or a civil servant through neglect, imprudence or want of skill disregards his duties according to statutes, instructions, or the nature of his office, he may be condemned in the ordinary courts to a fine or suspension for neglecting his duty. And second, that the civil servants are not under the control of ministers. A Swedish minister cannot give administrative officials binding orders when dealing with particular matters. The officials have only to follow the laws.

The Ombudsman has also the power to inspect the Government offices wherever they may be situated. And he systematically exercises this power by going on inspection tours and examining government files to see whether every thing is all right. Much of his information is derived from these inspection tours.

When the Ombudsman is satisfied on a complaint or from information otherwise received, e.g., from his inspection tours, that there is a case for investigation he starts an enquiry; first of all, he asks for documents from the authorities concerned; he has access to all documents, even secret ones. If the documents are not sufficient, he may examine the persons involved orally. If he finds that there has been any dereliction of duty, he takes steps. Under the Swedish Constitution the function of the Ombudsman is to see how judges, government officials and other civil servants observe the laws and to prosecute those who have acted illegally or neglected their duties. Although the primary duty of the Ombudsman is to prosecute indeed in early days he was deemed to be a prosecutor—now a days a reminder to the official concerned that his dealing with a matter has been faulty or improper is the common form of action taken. This reminder is deemed to be a reprimand of the official. Prosecution also is directed when legal rights have been infringed. It may be mentioned here that under Swedish law, an individual suffering damage as a result of negligence or error on the part of an official is entitled to damages from the official. Prosecutions are usually directed in such cases in order to give such an individual a right to claim damages. Judges have been prosecuted for failure to appoint defence counsel for a person charged with a crime, for directing arrest of persons on

insufficient evidence and for neglecting to hear and decide cases expeditiously where the accused had been arrested.

The Ombudsman makes an annual report to Parliament dealing with the work done during the year. This report is first considered by a committee of the legislature. The Committee makes a report to parliament. Sometimes the committee criticises one or more of the Ombudsman's decisions. If the work of the Ombudsman is considered unsatisfactory, the committee may even recommend his removal. The report of the committee when presented to parliament does not usually cause a debate. But members may ask questions which are answered by the Chairman of the Committee or they may make remarks about the activities of the Ombudsman.

The underlying idea about the institution of Ombudsman in Sweden appears to be first, to have an authority who will investigate complaints of dereliction of duty and direct prosecution of the delinquent officials, and second, to provide for an instrument through which parliamentary control may be exercised over the permanent officials who are not answerable to the ministers responsible to parliament.

20. The institution of Ombudsman was established in Denmark about ten years ago in 1955. The Ombudsman is elected by parliament after each general election for the life of parliament. An Ombudsman may be re-elected after his first term. The jurisdiction of the Ombudsman extends to the entire state administration, civil or military, and all persons acting in the service of the state, including ministers. But so far as ministers are concerned, the Ombudsman does not entertain complaints which involve political issues. For example, when a complaint was made that the government had overdrawn its account with a Bank, the Ombudsman declined to intervene and said :

"But where this limit, (i.e., limit of the amount that may be over drawn) is to be drawn, it must be dependent upon political, not legal, factors. For this reason, I am not competent to give an opinion on the subject. The rule of ministerial responsibility must afford protection against abuses." In another case, the Ombudsman held that he had no jurisdiction to criticise a statement made by the Prime Minister in Parliament on his usual ministerial responsibility.

The Judiciary has, however, been kept outside the jurisdiction of the Ombudsman on the ground that interference by the Ombudsman may affect the independence of the judiciary.

Any person may lodge a complaint but ordinarily the complaint is required to have some reasonable interest in the matter. A complaint must be made within one year of the order complained of. The Ombudsman may also undertake an investigation on his own initiative.

The Ombudsman has the jurisdiction to reject a complaint summarily without investigation, or after a summary investigation. He may also make a fuller and formal investigation. The number of complaints received, and of those on which action was taken, is revealing. In 1963, 1,130 complaints were received, 725 were dismissed, summarily, without any investigation, 254 were dismissed after summary investigation, 151 cases were formally investigated, critical comments were made in 53 and recommendations were made in 10 and the rest were pending at the end of year.

When a complaint is received, the Ombudsman asks the department concerned to submit all papers and documents. He may also examine witness. Complaints against orders from which there are appeals to higher administrative bodies are not entertained by the Ombudsman. But he is competent to entertain complaints even if the matter can be dealt with by the court.

The Ombudsman cannot annul or revise an administrative order. What he does is to criticise the act complained of and state his views. He can also make recommendations for action and also initiate or direct any prosecuting authority to initiate criminal or disciplinary proceedings. No prosecution, has, however been directed as yet. When he finds that a minister or a former minister ought to be held responsible under any civil or criminal law he may make a recommendation to that effect to parliament. If he find an official negligent or guilty, he may state his views to the official and also do so to the minister concerned and to parliament.

The Ombudsman's duty as expressed in the Act and the Directives is to keep himself informed as to whether public servants commit mistake or acts of negligence, and whether any such person pursues unlawful ends, takes arbitrary or unreasonable decisions in the performance of his duties.

21. The Norwegian Ombudsman was established by an Act only in 1962. The Ombudsman is elected by Parliament. The judiciary and the municipal administration are excluded from his jurisdiction, but ministers are included. Whether the Norwegian Ombudsman will, like his Danish Counterpart, limit his jurisdiction as regards ministers to non-political matters is not clear. As to governmental administration, his jurisdiction extends to all activities of the government including businesslike activities of the state and social service, such as education health etc.

The Ombudsman may act on complaints by persons and also *Suomotu*. The complaints must, however, have some interest in the matter, i.e., he must himself be affected by the master which he desires to bring before the Ombudsman.

The Ombudsman may call for information and production of documents but in this regard, his powers are somewhat limited. He has the same power as the courts have to call for the production of documents, that is, his power is circumscribed by the rule of privilege which obtains in court proceedings. He has no uncontrolled access to internal documents. The Ombudsman does not entertain any complaint when appeal to higher authorities is permitted, unless all available remedies are exhausted.

The Ombudsman has no power to annul or amend any administrative decision. He was no power, unlike the Swedish and the Danish Ombudsman, to direct prosecution or disciplinary proceedings. His power is limited to expressing his opinion on matters brought before him. As regards the exercise of administrative discretion the Ombudsman has the right to scrutinize such exercise only in so far as he finds the decision in question to be unlawful or clearly unreasonable.

The Ombudsman is required to file an annual report to Parliament.

22. It appears that the necessity of having an official of the nature and status of the Ombudsman was felt in these countries for the purpose of exercising parliamentary control over the administration, because perhaps, the usual modes of such control known to the democracies based on the British model were not available modes such as question, adjournment motions, debates or address to the King, debates on supply, half an hour debates, debates on motions for adjournment of the House whereby all sorts of grievances could be aired in Parliament etc., and parliamentary control exercised through ministers who control the executive officers.

23. Of the democracies of the British parliamentary model New Zealand has an Ombudsman also called Parliamentary Commissioner for Investigation since 1962, appointed under the Parliamentary Commissioner (Ombudsman) Act, 1962. The Ombudsman is appointed by the Governor-General on the recommendation of the House of Representatives. The Ombudsman cannot be a member of the House or hold any other offices without the permission of the Prime Minister. Although in form it is the House of Representatives which appoints the Ombudsman, in reality it is the government which has a majority in the House. The term of office of the Ombudsman is three years—the duration of parliament. But an Ombudsman can be re-appointed. This relatively short term of office may impair the independence of the Ombudsman, for an Ombudsman disliked by the Government which he criticises, may not get re-appointed. An Ombudsman may be removed by the Governor General on an address from the House of Representatives. The Ombudsman appoints his own staff but in this his powers are limited, the class and number of staff and their salaries, and conditions of service must be approved by the Prime Minister.

The jurisdiction of the Ombudsman extends to all administrative departments of the government (except the judiciary, local authorities and almost all administrative tribunals). His jurisdiction extends over the ministers not directly over ministerial decisions but in so far as he has approved of any departmental recommendations.

He can take action on a complaint (on which a fee of £ 1 is payable) or on his own initiative and investigate into any decision or recommendation made (including any recommendation made to a minister) or any act done or omitted relating to a matter of administration in any of the departments (which are listed in a schedule to the Act) by any officer or person employed therein. The Public Petitions Committee of Parliament may also refer to any case to him for investigation. He has no jurisdiction over any decision, recommendation, act or omission in respect of which there is a right of appeal or objection on the merits of the case to any court or tribunal, whether such right has been exercised or not and whether the time for exercising such right has expired or not. He has also no jurisdiction over the law officers of the Crown.

The Ombudsman has no power to annul or alter any administrative decision. His function is first to make a report or recommendation to the department and the minister concerned. If his recommendation is accepted well and good; if not, he may bring the matter to the notice of the Prime Minister and thereafter to that of Parliament. He can drop any proceeding if he thinks that the complaint is likely to have a remedy under the law or "existing administrative practice" *i.e.*, from the departments concerned.

The Commissioner can take action if he is satisfied that any departmental decision :—

- (1) is contrary to law;
- (2) is unreasonable, unjust, oppressive or improperly discriminatory;
- (3) is based on a mistake of law or fact;
- (4) is wrong or;
- (5) involved the exercise of discriminatory power for an improper purpose or on irrelevant grounds or where reasons should have been given.

The proceedings of the Ombudsman are private but the Commissioner must give an opportunity to a department or an officer to be heard if he intends to make any adverse mark against the department or the Officer. He has the right to examine all papers except those which the Attorney-General certifies that they involve security, defence, investigation of crimes etc.

In a recent address the present Commissioner of New Zealand said that during the first 18 months he had received 1100 complaints and fully investigated half of them. He rejected the others on ground of want of jurisdiction except 80 which were still pending. Of the 505 fully investigated he found that in 107, the complaints were justified. In a little more than half of these justified complaints, the departments concerned took remedial action properly in many cases before any recommendations was made by the Commissioner.

24. In England a Bill has been recently introduced for the setting up of an office of Parliamentary Commissioner for Administration. The main provisions of the Bill are :—

- (a) The Commissioner who will be disqualified to be a member of the House of Commons will be appointed by Letters Patent, his salary (£ 8600) and pension will be charged on the consolidated fund and is removable only on an address from the House of Commons.
- (b) The Commissioner's jurisdiction extends to all the departments except a few in which the security of the State, defence or foreign relations are involved. He will be entitled to investigate into any action of the departments over which he has jurisdiction including ministers, officers or members in the exercise of administrative functions. Matters where there is recourse to a tribunal or a remedy by way of proceedings in a court of law are excluded.
- (c) The Commissioner can initiate proceedings only on the complaint of a member of the House of Commons. This is to ensure that the rights of members to raise questions in Parliament are not jeopardised, and that frivolous complaints are excluded by a sifting at the initial stage. Any person or body may make a complaint to a member but such complaints must be made within 12 months of the order complained of.

- (d) The Inquiry by the Commissioner will be private. He must, however, give an opportunity to the person complained against to comment. He will have access to all departmental documents except those relating to cabinet or cabinet proceedings. The Crown will not be entitled to claim privilege.
- (e) The Commissioner will make a report of his investigation to the member concerned and will submit a general report annually to Parliament and may also make a special report. If the Commissioner thinks that injustice has been caused to the persons aggrieved in consequence of maladministration and that the injustice has not been or will not be remedied (presumably on the attention of the department concerned being drawn to the matter) the Commissioner may make a special report upon the case to the House of Commons.
- (f) The pendency of an investigation will not preclude the department concerned to take further action in the matter.

25. The office of the Parliamentary Commissioner, as has been emphasised in the White Paper presented to Parliament by the present Labour Government (Commd 2767) does not aim at the replacement of the existing parliamentary machinery for the redress of grievances but as a means whereby the members who desire to raise any matter in Parliament may have the assistance of a competent person for enquiring into the complaints received by them from their constituents. It says :

"In Britain, Parliament is the place for ventilating the grievances of the citizens by history, tradition and past and present practice. It is one of the functions of the elected members of Parliament to try to secure that his constituents do not suffer injustice at the hand of the government. The procedure of parliamentary questions, adjournment debates and debates on supply have developed for this purpose under the British pattern of Parliamentary government and members are continually taking up constituents' complaints in correspondence with ministers, and bringing citizen's grievances, great or small, to Parliament where ministers individually, and Her Majesty's Government collectively, are accountable. We do not want to create any new institution which would erode the functions of members of parliament in this respect, nor to replace remedies which the British Constitution already provides. Our proposal is to develop those remedies still further. We shall give members of Parliament a better instrument which they can use to protect the citizens, namely, the service of a Parliamentary Commissioner of Administration".

26. As envisaged in the British Bill, the position of the Parliamentary Commissioner seems to be similar to that of the Comptroller and Auditor General. The Comptroller and Auditor General examines the accounts of the government which the members have no time or capacity to scrutinize and makes his report about irregularities which he may have found and which may not have been rectified or explained. The members derive information about irregularities and make such use of them in Parliament as they desire. It may also be mentioned in this connection that the Comptroller General has no authority to criticise ministerial policy but can criticise a minister if he is involved in any irregularity detected. So far as ministers concerned, it seems that ministers will be, in the same position *vis-a-vis* the Parliamentary Commissioner.

27. We shall now consider the question whether there is any necessity or scope for establishing any institution as that of an Ombudsman in India. It has already been stated that if administrative orders against which remedies by way of appeals or otherwise to higher tribunals or courts of law are available and those in respect of which corruption is alleged are excluded, there will be a very limited sphere in which grievances of citizens may arise. It will have to be considered whether such an institution as the Ombudsman should be set up for such a limited purpose or citizens should be left to such remedies as are available to them by the existing parliamentary methods of redress.

Then, the countries like Sweden, Denmark and New Zealand which have set up such institutions are small in area and contain a small population varying from about 25 lacs to 75 lacs, whereas India has got a population of about 45 crores. If the standard of Sweden be taken, "Ombudsman" Deputy and six Jurists, India would require 420 persons of the status of Ombudsman and Jurists and a comparable Secretarial staff. The nature of enquiry by the Ombudsman which is private, personal and informal, will be totally lost with such a huge establishment.

28. These countries have only a centralised government whereas India is something of a federation with a Central Government and fourteen State Governments. It has to be considered whether the Ombudsman should be established on an All-India basis or there should be separate Ombudsman for the Centre and for the States. The difficulties of having an All-India Ombudsman are two fold : first, for an Ombudsman to deal with the huge number of complaints from all over the country against action taken by executive officers spread over throughout the territory of India would well nigh the impossible. He will have to have a Deputy Ombudsman and corresponding staff in each State. There will be a parallel organisation and as indicated already will do away with the informal nature of the investigation. The second difficulty is constitutional and more formidable. The executive government of each State is responsible for efficient administration to the State Legislature and not to the Union Legislature. An authority imposed upon the State by the Union Parliament will interfere with the executive powers vested in the State under article 162 and will go against the Constitution. If an Ombudsman has to be set up in the States, it seems that has to be done by the State Legislature for each State. In Canada, where there is a Federal Government and a number of Provincial Governments, it has been realised when a proposal was made for an Ombudsman, that an Ombudsman created under federal law would not extend to the provinces and that each province would need to provide its own Ombudsman.

29. It would not be advisable to bring ministers under the jurisdiction of the Ombudsman if one is appointed. The ministers are responsible to the legislature and any allegation against them of corruption or oppression or injustice should be dealt with by the legislature itself. No other authority should intervene between a minister and the House. If any investigation is necessary which the House is not in a position to undertake, the House may appoint a Committee or better set up a Commission under the Commissions of Inquiry Act for the purpose of investigating a particular case. Any inquiry into the acts of ministers by the Ombudsman should be limited to such acts as fall within his administrative duties on recommendation made by the officials and not against any policy decisions or allegations of a personal nature.

30. As regards officials, there may be same conflict of jurisdiction between the Government Departments concerned and the Ombudsman. The disciplinary power over the officials is vested in the executive Government and under Article 311, an officer has to be given an opportunity to show cause. What would be the nature of an enquiry, for instance, into corruption by the Vigilance Commissioner or into abuse of power by the Ombudsman has to be cleared up. Would it be an enquiry contemplated by Article 311? Or should there be a need for instituting another enquiry or enquiries before action can be taken against any delinquent official?

31. As already stated, the Ombudsman of a State will have to deal with complaints against orders made by officers at outlying stations. For the purpose of investigating such complaints it would not be possible to call for documents and papers, for that would bring the work of the relevant officer to a standstill. In such cases it may be necessary for the Ombudsman to undertake inspection or investigation tours to make inquiries on the spot without upsetting the work of the administration. If a large number of complaints are forthcoming, as is likely, (although many of them may have no substance), the Ombudsman is likely to be on constant tour unless he is authorised to delegate his powers. The delegation of powers to others is absolutely repugnant to the idea of Ombudsman who must personally investigate the complaints. In Sweden, the Ombudsman handles the more important cases himself and minor cases are left to the Deputy Ombudsman who, it would be recalled, is also appointed by the legislature. The Ombudsman may, however, choose to investigate a certain percentage of complaints from the mufassil as test cases the choice of cases being left entirely to his decision.

32. Except as proposed in England, in all the countries, any citizen can lodge a complaint with the Ombudsman; and the Ombudsman can also take action on his own initiative. On grounds of sound parliamentary practice, it seems the proposed procedure that the Ombudsman should be put in motion by a member of the legislature is better, for the member retains his parliamentary right and responsibility but he takes the assistance of the Ombudsman in the discharge of his parliamentary duties.

There is another point to be considered in this connection, whether, when a complaint is made to the Ombudsman by an individual citizen or by a member, would a member of the legislature be precluded from raising the same matter in the House by other parliamentary means such as putting questions, adjournment motions etc.,? Legislators are most likely to oppose a course which would prevent them from doing so. While they may agree to minor matters being left to the Ombudsman, they would not agree to lose a powerful weapon in their hands to use for political purposes. Such a course would also derogate from the authority of the legislature.

33. The setting up of an institution like that of the Ombudsman or Parliamentary Commissioner is be-set with many complications and difficulties in a vast country like India. If it is desired to have such an institution the following suggestions are recommended for consideration :—

- (a) There should be an Ombudsman at the Centre appointed under Central law and an Ombudsman in each State appointed by State law.

- (b) The Ombudsman for the Centre should be appointed by the President and for the State by the Governor, or, on the recommendation of the Council of Ministers. Election by the House where party government prevails has no better safeguard. Drawing the Chief Justice or Speakers into an affair between the House and the administration would involve unnecessary complications. If a wrong choice is made by the Council of Ministers, the House can criticise the appointment and get rid of the person. If Chief Justice or Speakers are there, it would be embarrassing both for them and for the members.
- (c) A person to be eligible for appointment must have the qualification to be appointed a High Court Judge.
- (d) The Ombudsman would hold office during good behaviour and can be removed only on an address by the House of the people or the State Assembly, as the case may be, for misbehaviour or infirmity as in the case of High Court Judges. He will hold office till the age of 65.
- (e) His pay and pension if any should be charged on the Consolidated Fund and shall not be votable.
- (f) His jurisdiction shall extend to all departments of Governments except those whose exclusion may be necessary for the security of the State, Foreign Relations or Defence.
- (g) The Judiciary should also be excluded. Ministers also should be excluded from his jurisdiction except in so far as they act as administrative authorities approving or disapproving any action of the departments.
- (h) The Ombudsman will initiate proceedings only on a reference made to him by a member of the legislature of a written complaint by any individual or body made to such member within 12 months of the day when the person aggrieved had notice of the matter alleged in the complaint.
- (i) The Ombudsman will not entertain any complaint if the person aggrieved has a right of appeal or review or revision before a tribunal or a remedy in a court of law.
- (j) The Ombudsman will have the right of calling for documents and information from the departments except Cabinet papers and papers which are certified by a minister to be such as the disclosure of which would be prejudicial to the security of the State. He can also examine witnesses.
- (k) When the Ombudsman initiates an investigation he must give an opportunity to the Department or the officer concerned to represent its or his case.
- (l) The Ombudsman will have the power to reject any complaint summarily if he thinks that it is not within his jurisdiction.
- (m) The Ombudsman may suggest to the department concerned remedial measures but shall not have the power to annul or alter any administrative order.

- (n) During the pendency of the investigation, the department concerned will not be precluded from taking action in respect of the subject matter of complaints.
- (o) After investigation, the Ombudsman shall report the results of his investigation to the member. If on an investigation, the Ombudsman thinks that injustice has been done as a consequence of mal-administration and the injustice has not been or will not be remedied, he may make a report to the legislature. He will also make an annual report of his working to the legislature.

*Sd./-*

(CHARU C. CHAUDHURI)

*Chairman*

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Grievances.*

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