

**Title of Project:
Defining the Concept and Role of Ombudsman Institutions in Asia.**

***Rajani Ranjan Jha
Professor
Department of Political Science
Banaras Hindu University (INDIA)**

The Ombudsman institution originated in Sweden under the Constitution of 1809 as an effective mechanism for handling the grievances of the people against administrative impropriety and insensitivity. The broad term for this is maladministration. The Ombudsman has proved to be an invaluable help to the Common man because of its high stature, independence, impartiality and objectivity, easy access, inexpensiveness, informal procedure, power to see all government papers, suo moto power, confidentiality and flexibility in terms of adaptability, mediatory role and recommendatory character. Originally, the institution emerged with power to look into complaints concerning public/ government sector only. Ever since its adoption by Denmark in 1955 the institution has been spreading fast to all continents and countries and today, it is functioning at supra-national, national, provincial and local levels in many countries. In addition, many other variants of Ombudsman type institutions are also functioning globally. Apart from being looked upon as a grievance redressal mechanism, the institution of Ombudsman is also looked as an institution that reforms the system of public administration, checks corruption, promotes good governance, restores public confidence in administration and strengthens democracy.

In the changing world scenario when a lot of emphasis is being placed on market forces, neo-liberal theories and the adoption of New Public Management as the mantra of the day a paradigm shift appears to be taking place in managing public affairs in terms of policy formulation, strategies of implementation, as economy and efficiency have emerged as the topmost considerations in deciding matters concerning even the State. In a situation when the downsizing or rightsizing of the State is taking place and much of what used to be State's domain of activities are now being outsourced or given to private operators. This has created a new situation in which the role of the Ombudsman institution is also being affected. There is a need to look afresh at the traditional concept and role of the Ombudsman under the changed domestic and global situation.

But before we begin to discuss and define the concept and role of the Ombudsman in Asia it would be worthwhile first to make a comparative survey of the origin, concept, method of appointment and removal, jurisdiction, powers and functions, resources available and the intention with which these Ombudsmen institutions were created in different countries of Asia. Asia represents variety not only in terms of culture but also in terms of governmental, legal and

administrative systems. It is, therefore, not surprising to find significant differences in detail between one Ombudsman scheme and another in Asian countries. In terms of spread and visibility where as some countries have Ombudsmen at the national level (Pakistan, Sri Lanka, Hong Kong, Thailand, Philippines, etc.) others like India have only at the provincial and local levels (Kerala). Pakistan has Ombudsman both at national and provincial levels. Control Yuan of China and Ombudsman in Japan have their own unique features. Similarly, these Asian Ombudsmen differ in terms of their methods of appointment, tenure, upper age limit, process of removal, etc. From the point of view of their jurisdiction and mandate also they differ. All the Asian Ombudsmen deal with the cases concerning maladministration. But how the different Ombudsman Acts view maladministration remains a serious point of consideration. Some Ombudsman have human rights within their jurisdiction, others don't have. What is the legal situation in terms of suo moto power or direct investigation by the Asian Ombudsmen? What is the deciding factor in taking up the investigation of these cases? Do the Ombudsmen put in writing why they decided to take up a case under suo moto power? Generally, Ombudsmen deal with matters concerning administration and not policy. But in the case of Hong Kong Ombudsman there is no such distinction between policy and administration. 'The Ombudsman has stated that if an unfair administrative decision emanated from an unfair policy, no investigation would be complete without examining the validity of the policy itself.' What is the percentage of cases rejected by the Ombudsman as they were outside his jurisdiction? What is the treatment meted out to cases not within the jurisdiction of the Ombudsman? What is the ratio of the acceptance of Ombudsman's recommendations by different governments in Asian countries? In which types of cases the recommendations were not accepted? After the conclusion of investigation what is the procedure that is adopted by the different Ombudsmen? What option the Ombudsman has if his recommendations are not accepted by the competent authority?

Another area of enquiry into Asian Ombudsmanship could be the aims and intentions with which these institutions were created? Some of the aims could be: to redress grievances arising out of administrative injustice or maladministration, fighting corruption, protecting human rights, promoting good governance, acting as reformer of laws etc.

Still another area of enquiry could be situation of the Ombudsman institution vis-à-vis New Public Management. Do the Ombudsmen have any jurisdiction regarding grievances arising out of outsourced services? What is the actual position in different Asian countries? How do the Ombudsmen view their role under the earlier situation and under new changed circumstances of neo liberal policies? Should the role of the Ombudsman be extended to the private sector as well in the light of the contracting out of government functions/ services to private sectors/ agencies? In which way have the introduction of Right to Information and Citizen's Charter affected the office of the ombudsman in Asia? As a reformer of public administration what type of recommendations Ombudsmen have made and what has been the response of the government to these suggested changes? How have the Ombudsmen institution been made accountable? To

what extent have the ombudsman institution been influenced by indigenous culture, administrative practices etc? The above mentioned are some of the important questions which need to be addressed to in any serious study of the Asian Ombudsman ship.

In the light of the above questions and related recent developments the project on the **concept and Role of Ombudsman institution in Asia** will be undertaken.

Scope of the Work: The scope of work will extend to those select countries in Asia where the Ombudsman institution has been established. The study will focus on the influences in the establishment of the institution, the indigenous roots, if any; the nature of Ombudsmanship established, the method of appointment, jurisdiction, procedures adopted by the institution for complaints, recommendation, views/perception of Ombudsmen on their role, need for change in Ombudsman's role in view of New Public Management, and evaluation of the institution in terms of success and failure etc.

The scope will also include the indigenous practices, if any, adopted by the Ombudsmen in Asian Countries.

While discussing the role of the Ombudsman in Asian countries his role as grievance man, as a citizen's protector, as a law reformer, as a promoter of good governance will be taken into consideration. How have the Ombudsmen offices coped up with the new challenges in the face of globalization and adoption of New Public Management practices by Asian governments? It will also throw light on the question of need to extend the role of the Ombudsman to private sector as well in view of outsourcing of services etc.

The Main Themes:

1. Introduction-relevance of the theme of study, objectives of study, literature survey, methodology etc.
2. Ombudsman institution - Conceptual understanding - Development of the institution in the West, main feature, emerging questions in recent years.
3. Ombudsmanship in Asia – Historical development, Method of Appointment, Removal, Powers jurisdiction, procedure adopted in investigation, recommendation, new features of ombudsmanship in Asia as different from the West etc.
4. Role of Ombudsman- This section will be based on the Constitutional/legislative mandate of the Ombudsman, his role in terms of functioning in the handling of complaints; the role perception of the Ombudsmen themselves- how the media and civil society look upon the role of the Ombudsman and the need, if any, of redefining the role of Ombudsman in Asian context.
5. Conclusions: Findings and concluding observations.

Methodology- It will be an exploratory study and hence a multipronged methodology to complete the project will be adopted. This will include analytical and descriptive method as far as historical development and analysis of legal framework is concerned. The analysis of the role of Ombudsmen based on complaints disposed of will be gathered through published annual reports of the Asian Ombudsmen. Articles published in books, journals and newspapers etc., materials posted on websites will be consulted. Thus, both primary and secondary sources will be made use of in the completion of study. Personal interactions/ interviews with the Ombudsmen, participation in and interaction with other participants in seminars and conferences of/ on Ombudsman in general and Asian Ombudsman in particular will help in understanding the deeper issues involved in the role of the Ombudsman in Asia.

Available Research Materials(to be consulted)

- Ombudsman Acts of different countries in Asia.
- Published Annual Reports of the Asian Ombudsmen.
- Other publications of the Ombudsmen and their offices including press handouts.
- Parliamentary Debates.
- Books, articles published on Asian Ombudsmen in journals, magazines, newspapers etc.
- Materials posted on websites.

Books(Tentative Select Bibliography)

- Anderson, Stanley V., Ombudsman Readings, Edmonton, International Ombudsman Institute, 1985.
- Dhawan R. K., Public Grievances and the Lokpal: A Study of the Administrative Machinery for Redress of Public Grievances, New Delhi, Allied, 1981.
- Gellhorn, Walter, Ombudsmen and others: Citizens' Protectors in Nine Countries, Cambridge, Harvard University Press, 1966.
- Gregory, Roy, The Parliamentary Ombudsman. A Study in the Control of Administrative Action, London, Allen & Unwin for the Royal institute of Public Administration, 1975.
- Gregory, Roy & Philip Giddings (Ed.), Righting Wrongs: The Ombudsman in Six Continents, IOS Press, Oshima, Netherlands, 2000.
- Hill, Larry B., The Model Ombudsman: Institutionalizing New Zealand's Democratic Experiment, Princeton, NJ, Princeton University Press, 1976.
- International Bar Association's Publications on Ombudsman.
- International Handbook of the Ombudsman (Ed.) by Gerald E. Caiden, Westport, Conn: Greenwood Press, 1983.
- Jain, M. P., Lokpal: Ombudsman in India, Bombay, Academic Books, 1970.

- Jha, Rajani Ranjan,, Lokayukta: The Indian Ombudsman, Varanasi, Rishi Publications, 1990.
- Ombudsman for India:Perspectives on Lokpal
Proposals,Bhubaneswar,Professor Sree Ramchandra Das Memorial Foundation,2007
- Lokpal,New Delhi,Lok Sabha Secretariat,1986
- Lundvik,Ulf,The Ombudsman as a Watchdog of Legality and equity in Administration,IOI,1980
- Lewis,Norman & Singh,S.S.,Ombudsmen:India and World Community,New Delhi,Indian Institute of Pub.Administration:British Council Division,British High Commission,1995.
- Mishra T.S. Lokayukta and public Interest, Patna,Secretariat Printing Press,1986
- Montiero,JB: Corruption: Controal of Maladministration , Bombay, Mahaktalas,1966.
- Robson,William A, The Governors and the Governed,London,George Allen and unwin ,1964.
- Rowat,Donald C.(Ed.)The Ombudsman,Citizen's Defender,London,Allen & Unwin,1965.
- _____,The Ombudsman Plan:Essays on the Worldwide spread of an Idea,Toronto,McLelland and Stewart,1973
- Sawyer,Geoffrey,Ombudsman,Melbourne University Press,New York,1964Shamshul Islam,The Ombudsman:An Institution for Bangladesh,Dacca,Local Government Institute,1974.
- Shukla,K.K. & Singh,S.S.Lokayukta:Ombudsman in India:A Socio-Legal Study,New Delhi,IIPA,1988.
- Sohoni,S.V. Ombudsman in India, Ahmedabad,Harold Laski Institute,1984.
- Stacey, Frank,The British Ombudsman,Oxford,Clarendon Press,1971.
- Sujuco,A.I.Sandigambayan,An Ombudsman for Phillipines,Manila,1971
- Weeks,Kent M.,Ombudsman Around the World:A Comparative Chart,Berkley,Institute of Governmental Studies,Univ.of California,1978.
- Whyatt,John: The Citizen and the Administration: A Redredss of the grievances: A Report by Justice, London,1961.
- **Books on Ombudsman concerning specific countries under study in Asia will also be consulted.**