



## The Importance of Implementation the Ombudsman Act 1980 in Bangladesh

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**Abstract:** The ombudsman is very important for any state of proper functioning of government activities. An ombudsman is a state official appointed to provide a check on government activity in the interests of the citizen, and to oversee the investigation of complaints of improper government activity against the citizen. This paper is to secure fairness, integrity, accountability and efficiency in public affairs, by methods conducive to promote confidence in all institutions of the state. In conclusion this paper states that an institution like the ombudsman would be very essential for the interest of the public in Bangladesh. This paper provides an overview of the nature of ombudsman in general, its genesis in Bangladesh and analyses the role a parliamentary ombudsman may play in facilitating 'good governance' in the country, if established.[41].

**Keywords:** Ombudsman Act1980, Constitution of Bangladesh, Ombudsman, Bangladesh, Transparency.

### Introduction

Ombudsman first introduced in the Scandinavian countries in 19th century, and then in the United Kingdom and in other countries in the second half of the twentieth century. An ombudsman ombudsperson, ombud, ombuds is an official who is usually appointed by the government or by parliament but with a significant degree of independence. In some countries, an inspector general, citizen advocate or other official may have duties similar to those of a national ombudsman and may also be appointed by a legislature. Below the national level, an ombudsman may be appointed by a state, local, or municipal government. Unofficial ombudsmen may be appointed by, or even work for, a corporation such as a utility supplier, newspaper, NGO or professional regulatory body. The typical duties of an ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation. Ombudsmen sometimes also aim to identify systemic issues leading to poor service or breaches of people's rights. At the national level, most ombudsmen have a wide mandate to deal with the entire public sector, and sometimes also elements of the private sector (for example, contracted service providers). In some cases, there is a more restricted mandate, for example with particular sectors of society. More recent developments have included the creation of specialized children's ombudsmen [43]. Hence, some sort of controls over the administration is essential for ensuring accountability. In our country, to make the administrators accountable and to minimize mal-administration, inefficiency, arrogance and abuse of power which are built into the system of our administration, some internal based on hierarchy and include time limits for disposal of files, inspection, supervision, and the office of Ombudsman can be such an external, red tape, arbitrariness, bias, corruption etc. which in many ways undermine human dignity and human rights. On the other hand, there is a demand from the civil society in Bangladesh that the office of Ombudsman to be created so that complaints against unlawful excesses of administrative power against any citizen are fully investigated and redressed. But it's a matter of sorrow that ombudsman is not implemented in Bangladesh.

**Materials and methods:** [44]

The methodology in this paper combines the recall enquiry of the post and the analytical use of the recent literature available in the field of Ombudsman in different parts of the world. With a view to address the basic issues in this paper, the Ombudsman of Swedish, the Ombudsman of UK have been consulted. In addition other relevant document and works in the area of the Ombudsman have been consulted. Moreover, the constitution of the Republic of Bangladesh has been consulted to find out the intention of the constitutional drafters in this regards, and the Bangladesh Ombudsman Act, 1980 is also meticulously examined in order to find out its loopholes and suggest an appropriate model for Bangladesh in its perspective [4]. The study is basically qualitative in nature where both primary and secondary sources have been used. As well, a combination of analytical methods and current legislative methods, together with future legislative techniques, was used in the study.[42]

**Definition and introducing of Ombudsman:**

The Black's Law Dictionary defines Ombudsman as "an official or semiofficial office or person to which people may come with grievances connected with government. The Ombudsman stands between, and represents, the citizen before government." According to Oxford Dictionary "Ombudsman is an official appointed by a government in investigate and report on complaints made by citizens against public authority". According to Bernard frank "Ombudsman on office established by constitution or statute headed by a independent, high level public official who is responsible to the legislature, who receives complaints from aggrieved person against government agencies, officials and employees or who acts on his own motion and has power to investigate, recommend corrective action and issue reports". The office of ombudsman was created first in 1809 when Sweden adopted its new Constitution. The office came to be known as the ombudsman of the parliament or Parliamentary Ombudsman. In 1915 the office of the military ombudsman was created in regard to defense and military administration. In 1968 these two types of ombudsman were amalgamated and now there are four parliamentary ombudsmen working in Sweden. One of them is the Chief Parliamentary Ombudsman [10]. Besides these parliamentary ombudsmen there are some non-parliamentary ombudsmen in Sweden like-

- i) Equal Opportunities Ombudsman;
- ii) Children Ombudsman;
- iii) The Press Ombudsman;
- iv) The Ombudsman against Ethnic Discrimination; and
- v) The Consumer Ombudsman etc.

There are 46 countries that have parliamentary ombudsman. Among our neighboring countries. In India ombudsmen are known as Lokpal and Lokayakta. In SriLanka it has one ombudsman known as Parliamentary Commissioner for Administration which was introduced in 1981.

**Constitution of Bangladesh: Article 77:** Bangladesh constitution provided for the constitution of the office of Ombudsman for ensuring accountability and transparency in administration. Article 77 of the Constitution specifically states that:

Parliament may by law, provide for the establishment of the office of Ombudsman-

- (1) The Ombudsman shall exercise such powers and perform such functions as parliament may, by law, determine, including the power to investigate any action taken by a Ministry, a public officer or a statutory public authority.
- (2) The Ombudsman shall prepare an annual report concerning the discharge of his functions, and such report shall be laid before parliament."

Legal history reveals that in pursuance of Article 77 of the Bangladesh Constitution, a Bill was passed in the parliament in 1980. The Bill: known as the Ombudsman Act, 1980 (Act XV of 1980), contains,

among others, the provisions relating to the establishment of the office of Ombudsman in the country. But the reality is that the law establishing the office of Ombudsman in the country is yet to be implemented by the Government.

**The Ombudsman Act 1980 in brief:**

The salient provisions of the Act are:

- (1) There shall be an Ombudsman who shall be appointed by the president on the recommendation of the Parliament, Sec. 3 (10).
- (2) Parliament shall recommend for appointment a person of known legal or administrative ability and conspicuous integrity, Sec.2.
- (3) The Ombudsman shall hold office for a term of three years and shall be eligible for reappointment for one further term, Sec. 4(1).
- (4) The Ombudsman shall not be removed from his office except by an order of the President passed pursuant to a resolution of Parliament supported by a majority of not less than two-thirds of the total number of members of the Parliament on the ground of proved misconduct or physical incapacity and, in that case, the Ombudsman shall be given a reasonable opportunity of being heard in person, Sec. 4 (2).
- (5) The remuneration, privileges and other conditions of service of the Ombudsman shall be same as are admissible or applicable to a judge of the Appellate Division of the Supreme Court of Bangladesh, Sec. 3(5).
- (6) The Ombudsman may investigate any action taken by a ministry, a statutory public authority, or a public officer in a case where there is a Complaint in respect of such person who claims to have sustained.
- (7) Injustice in consequence of such action; or who affirms that such action has resulted in favor being unduly shown to any person or in accrual of personal benefit or gain to any person; or information has been received by him from any person or source, otherwise than on a complaint, that such action is of nature mentioned before. Ombudsman shall have no right to investigate any civil or criminal proceedings before any court, or the function performed by, or the conduct of, a person acting as a member of a court. Where the Ombudsman proposes to conduct an investigation, under the Ombudsman Act. 1980, he shall forward a copy of the complaint or, in the case where he proposes to conduct the investigation on his own motion a statement setting out the grounds therefore, to the ministry, statutory public authority or the public officer concerned and afford the ministry, public statutory authority or the public officer concerned an opportunity to offer its or his comments on such complaint or statement. The Ombudsman may obtain information from such persons and in such manner, and make such enquires and such manner as he thinks fit. Where any action is under investigation by any other person under any other law, the Ombudsman shall not investigate such action unless for reasons to be recorded in writing he is of opinion that an investigation by him is necessary, Sec. (6.7).
- (8) For the purposes of an investigation, the Ombudsman may require any public officer or any other person who in his opinion is able to furnish information or produce documents relevant investigation, Sec. 8 (1).
- (9) For the purposes of any such investigation the Ombudsman shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 in , respect of the following matters:
  - (a) Summoning and enforcing the attendance of any person and examining him on oath;
  - (b) requiring the discovery and production of any document;
  - (c) requiring evidence on affidavit;

- (d) requisitioning any public record or a copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses of documents, Sec. 8 (2).
- (10) If, after investigation of any action, it appears to the Ombudsman that injustice has been caused to the complainant or to any other persons in consequence of maladministration in connection with such action, the Ombudsman, shall by a report in writing, recommend to the 'competent authority concerned that such injustice should be remedied in such manner and within such time as may be specified in the report. The competent authority shall, within one month of the expiry of the time specified in the report, intimate to the Ombudsman of the action taken in compliance with the report. If, after investigation of any action, it appears to the ombudsman that such action has resulted in favor being unduly shown to any person or in accrual of undue personal benefit given to any person and that this may be substantiated, he shall, by a report in writing, communicate his findings, together with the relevant documents, materials and other ; evidence, to competent authority and recommend such legal, departmental or disciplinary action as he deems fit The competent authority shall examine the report and within one month of date of receipt of the report, intimate to the Ombudsman the action taken or proposed to be taken on the basis of his report. If the Ombudsman is satisfied with the action taken or proposed to be taken he shall close the case but where he is not satisfied and if he considers that the case so deserves, he may make a special report to the President, Sec. (9).
- (11) The Ombudsman shall prepare an annual report concerning his discharge of functions and submit it to the President who shall cause it, together with an explanatory memorandum to be laid before Parliament, Sec. 9 (6).
- (12) If, during any investigation, the Ombudsman finds any defect in any law, he may report such defect to the government and recommend such reform of the law as, in his opinion, will remove such defect, Sec. 9 (7).
- (13) The Ombudsman may appoint officers and other employees to assist him in the discharge of his functions. The categories of officers and other employees who may be appointed by the Ombudsman and their terms and conditions of service shall be such as may be prescribed after consultation with the Ombudsman. The Ombudsman may with previous sanction of the government, utilize the services of any officer, employees or agency of the Government, if such services are required by him for the purpose of discharging his functions, Sec. (10)

### **Importance of Ombudsman Act 1980 in Bangladesh:**

In Bangladesh ombudsman is necessary for good administration and eliminate maladministration. At present ombudsman should implement in Bangladesh. Because an ombudsman has the power to investigate and file complaints against otherwise influential organizations or high-ranking officials. They often have the power to request key documents, interview individuals, and order a legal investigation if necessary. If agreed to, ombudsmen rulings are legally binding. It is, therefore, necessary to have a good and efficient administration. Technological development and complex living of today has led to vast expansion of administration function and with it has increased administrative abuse of power. Experience shows that normal judicial system is not effective in preventing such abuse of power. Somehow a system must be evolved which will enable proper investigation of the citizens' complaints against abuse of power by the administrative officials and redress made. In many countries the problem has been sought to be solved by establishing the office of Ombudsman. It is recognized worldwide that an ombudsman system makes the public administration more transparent and accountable to the public. This paper aims to examine the provisions of the Ombudsman Act 1980, as well as the position, role and necessity of the Office of the Ombudsman in Bangladesh. It also evaluates how the ombudsman institution can act as a gateway for citizens of Bangladesh to resolve complaints against the maladministration of public administration in the country. The executive organs of every country are always alert for the protection of citizens' rights and independence. And every country has also different courts and tribunals in under executive for the remedy with the solution in

case of violation of any human rights (Shamim, 2022). So, normally the question is arising that, why the Ombudsman is must in this situation. There are some justifiable and practical reasons for which it is must that the immediate establishment of Ombudsman in Bangladesh –

**Firstly:** Though we have a court system to resolve legal disputes of various types. The most of the courts is inordinate delay due to which our courts can provide only technical justice rather than substantial justice. It is seen that in Bangladesh and also others countries under third world that for getting the remedy for a simple case it takes a long term. For that reason most of the people don't like to go to the court for the violation of their legal rights and it takes long period.

**Secondly:** It is a very expensive to continue a case in court. Not only that people also waste money but they don't get the proper remedy in many cases.

**Thirdly:** In most of the cases our country gives the declaration of remedy whereas the real remedy lies with the administrative and law enforcement agency which frequently flouts the decision of the courts. There are many cases in Bangladesh where the court order is neglected by the administration. Those cases are – Farzana Haque v. Bangladesh (writ petition no. 271 of 1990), Radha Kanta v. Deputy Commissioner (31 DLR, 352). Nazrul Islam case etc. If there had been an Ombudsman then the above mentioned cases to courts would not have arisen and the administration would not be able to neglect the court order.

**Fourthly:** The courts and tribunals are very careful for the solution in some cases in many times. But the administrative worth is related in some cases and for those cases the reports of administration, Opinion on deed must to address in the court and those is unavoidable. But for the reason of administrative “red tape” or to harass the plaintiff the administration authority delays to submit the report or papers without any reason. For that reason people don't take step against any administration authority or any officer.

**Fifthly:** Harass by the administrative authority many people seek remedy in the High Court Division by writ petition but in many cases the High Court Division may not take the writ petition.

**Sixthly:** In our country criminal cases are filed more than the civil cases in a year. And these criminal cases are dealt primarily with Magistrates Courts. But these Magistrates Courts are related with corruption. Had there been an Ombudsman these magistrates would not be able to take bribes and to be as corrupt as they are now.

**Seventhly:** Public servants of various corporations and particularly most of the teachers of the government universities are doing the most corruption in their profession and engaging themselves in “extra profitable” work. If there is an office and proper functioning of a duly appointed Ombudsman by the parliament, then the accountability of those public servants is likely to be well ensured and our public administration will be more effective and clear for the benefit of the people.

### **Findings and discussions:**

This study finds that the ombudsman is a vital institution for Bangladesh to eliminate maladministration, nepotism and abuse of human rights, as well as abuse of the power of the public administration. Going forward, Bangladesh needs to amend the existing Ombudsman Act 1980 and then take proper steps to firmly establish the Ombudsman Office to ensure and increase public confidence, operational effectiveness and good governance and human rights throughout the country. In our country, according to the Act (section 3(2) “the Ombudsman shall be appointed by the President on the recommendation of the Parliament” is better than other models and steps. In that Act, participation of opposition political parties in the appointment procedure of the ombudsman is not mentioned. So, the ombudsman may not be accepted by the opposition political parties and other actors, because still our political culture is volatile, not sound. In the absence of such specification, the Ombudsman recommended by the ruling party would not be natural; acceptability and impartiality may be seriously questioned by the opposition political parties and non-government actors. There is another fact that, there is a provision for appointing officers and employees to assist the ombudsman at

the section 10 of the Act. But, Qualifications of them are not mentioned here. As a result, the functions of the ombudsman may be hampered due to lack of efficient manpower in its office.

According to section 4(1) of the Act, The working period or tenure of the Ombudsman is three years from the date on which he enters upon his office. But, in reality, it is difficult for him to work effectively and successfully and this period is not enough to work efficiently. According to section 3(2) of the Ombudsman Act, “The Ombudsman shall be a person of known legal or administrative ability and conspicuous integrity.” A person with legal capability may not have the requisite administrative ability and similarly a person with administrative capability may not have the legal ability, which is more essential for the post of Ombudsman. So, the Ombudsman must have the legal as well as administrative expertise and experience. It is tough to sort out the qualified ombudsman, mentioned in this act.

**Research limitations/implications:** [43]

The main implication of this study is that it will play an important role for the development of the rule of law and human rights in Bangladesh. This study will make its readers and particularly the citizens of Bangladesh aware of the importance of the “Office of the Ombudsman” in Bangladesh and the existing loopholes in the current Ombudsman Act 1980. This research also provides a new avenue for scholars to contribute their knowledge and wisdom toward nation-building by further researching the Office of the Ombudsman in Bangladesh. In this way, scholars in this field can share their experiences of the role of the ombudsman to a wider audience.

**Conclusion:** [42]

Over the course of this paper, it has been established how, to establish democracy and good governance, it is necessary for the administration to be accountable. It has been mentioned how, in Bangladesh in particular, the bureaucracy has long played a powerful role with little in the way of checks and balances. At the same time, it has been observed that the traditional avenues of redress for maladministration have not always been successful. It is in such a milieu that the need for an Ombudsman arises. If the Ombudsman is established with a truly independent, impartial nature and vested with appropriate powers and jurisdiction, then it is hoped that it will be a strong voice against administrative malpractice and will be able to provide innovative recommendations to combat such. Simultaneously, the provision of adequate and appropriate resources and concrete steps towards ensuring the independence of the body may assist in reducing entrenched practices of obtaining illegal gratification, deliberately misplacing records, removing and destroying documents, etc. To achieve these objectives and to avoid the pitfalls indicated above, it is necessary to reform the Ombudsman Act, 1980 through a suitable Parliamentary Amendment. However, it is likely, that just as in many other developing countries, a Parliamentary Ombudsman in Bangladesh will face endemic shortages of staffing and finances, especially as Bangladesh is a densely populated country. They will also have to cope with the daunting challenges incumbent in developing such a service in a country where many citizens are illiterate and/or highly suspicious of authority. Unfortunately, as Clothier posits, “the best administration in a complex society is too costly: and the depressing conclusion therefore is that it will always be so and there will always be a steady volume of complaints about maladministration. And of course an Ombudsman will be needed to hear and determine them”<sup>65</sup> But as Hossain comments, such an initiative can only be beneficial in the long term as it “will undoubtedly go a long way in helping to establish a real democratic social order and polity based on parliamentary system of government for the well-being of the people at large.”

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