



FACULTY OF JURIDICAL SCIENCES

Course : LLB ,5th Semester

Subject : Administrative Law

Subject code : LLB 501

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ADMINISTRATIVE LAW

UNIT I

- Definition, Nature and Scope of Administrative Law, Conceptual Objections to the growth of administrative Law
- Rule of Law, Separation of Powers
- Administrative discretion: Meaning, Need, and Judicial Control

UNIT II:

- Legislative Power of Administration: Necessity, Merits and Demerits,
- Constitutionality of Delegated Legislation; Legislative and Judicial Control of delegated
- Legislation

UNIT III:

- Principles of Natural Justice and their Exceptions Rule against Bias, Concept of Fair hearing
- Judicial review of administrative action through writs;
- Judicial control through suits for damages, injunction and declaration
- Administrative Tribunals: Need and reasons for their growth, characteristics, jurisdiction and procedure of administrative Tribunals.

UNIT IV:

- Liability of the administration: Contractual liability, tortious liability. Public Undertakings, their necessity and Liabilities, governmental Control, Parliament Control, Judicial Control
- Ombudsman: Lokpal and Lokayukta
- Right to information ACT, 2005 (S.1-S.20)
- Government Privilege to withhold evidence in public interest

Books

1. Wade, Administrative Law (VII Ed.) Indian Print, Universal
2. M.P.Jain, Principles of Administrative Law, Universal Delhi
3. I. P. Massey: Administrative law

LECTURE 41



OMBUDSMAN: LOKPAL AND LOKAYUKTA

Ombudsman means a delegate, agent, officer or commissioner. Gender defines ombudsman as “an officer of parliament, having as his primary function, the duty of acting as an agent for parliament, for the purpose of safeguarding the citizen against abuse or misuse of administrative power by the executive “. Administrative law provides for control over the administration by an outside agency, strong enough to prevent injustice to the individual, at the same time leaving the administration adequate freedom to enable it to carry on effective government. In every progressive system of administration, there is need of a mechanism for handling grievances against administrative fault Ombudsman is one of such machinery.

The parliamentary and judicial control on the administrative action is very weak, except there is a statutory provision for an administrative tribunal. There is no means for handling grievance against misconduct, inefficiency, delay, negligence, etc .against the officials. The natural remedy open to the aggrieved person, in such cases, is for him to persuade the minister if he is accessible to the aggrieved person, or to draw his attention by raising question in parliament to which he is responsible .but in practice it is difficult .even the parliamentary remedy is also not adequate. It was felt necessary to have alternative or additional institution to control wrong decision, maladministration or corruption of public officials. the ombudsman is one of such principle alternative provided for.

Origin of Ombudsman -

Ombudsman first introduced in Sweden by King Charles XII on 18th century. It is also practiced by Finland in 1919, Denmark in 1953, Norway in 1963, New Zealand in 1962, US 1960 and UK 1967.

Meaning of Ombudsman

Ombudsman is an appointed official whose duty is to investigate complaints, generally on behalf of individuals such as consumers or taxpayers, against Institutions such as companies and government departments.

Ombudsman means the “grievance man” or a “commissioner of administration “.

Garner -

According to Garner, he is an officer of parliament having as his primary function, the duty of acting as an agent for the parliament for the purpose of safeguarding the citizen against abuse or misuse of administrative power by the executive.

Characteristics of ombudsman

Independence - It is a body that assists with fair and expeditious resolution of complaints in an impartial confidential and independent manner.

Impartiality and fairness - It works impartially

Credibility - It maintains its Credibility

Confidentiality -

Prof S.K. Agrawal

According to Professor SK Agrawal, the term ombudsman refers only to institute, which have three basic and unique characteristic which are as follows -

- i) Ombudsman refers only is an independent and non-partisan officer of the legislature who supervise the administration.

- ii) He deals with specific complaints from the public against administrative injustice and maladministration.

iii) He has the power to investigate, criticize and report back to the legislature, but not to reserve administrative action.

Importance/need of Ombudsman -

a) Powers and Duties of Ombudsman -

A) Ombudsman is a watchdog of the administration or the protector of the little man ombudsman inquires and investigates all complaints made by the citizen against the abuse of discretionary power, mal administration inefficiency and take appropriate actions . for that purpose very wide power has been given to him . he has access to departmental files. the complainant is not required to lead any evidence before the ombudsman to prove his case he is empowered to grant relief to the aggrieved person . his function is to satisfy himself whether the complaint is justified or unjustified .he can act even suo-moto .these power are not limited like the powers of civil court. he is responsible and responsive to people

B) Nature/Status of an ombudsman is judge or lawyer or a high officer and his character, reputation and integrity are above board. he is appointed by the parliament and sets out the reaction of the citizen against the administration .he makes his own recommendation to eliminate the cause of complaints .ombudsman is thus a strong position to redress individual grievances

arising out of bad administration.

Defects in Ombudsman -

I) It is argued that this institution may prove successful in those countries which have a comparatively small population, but it may not prove very useful in populous countries like United States of America or India as the number of complaints may be too large for a single man to dispose of.

II) It is also said the success of the institution of ombudsman in Denmark owes a great deal to the personality of its first ombudsman professor Hurwitz. He took a keen interest in the complaints made to him and investigated them personally . prestige and personal contact would be lost if there are a number of such officers, or if there is a single officer who has always to depend upon a large staff and subordinate officers.

III) According to Mukherjee, J. in India this institute is not suitable .he describe it as “an accusatorial (implying accusation) and inquisitorial(like and inquisitor) institution –a combination unprecedented in a democracy with traditions of an independent judiciary “. It is an impracticable and disastrous experiment’ which will not fit into the Indian constitution

The Lok Sabha passed the Lok Pal and Lokayuktas Bill, 2011 on December 27, 2011. The text of the [Bill as Passed by Lok Sabha is available here](#) And [PRS Analysis of the Bill as Passed by Lok Sabha is available here](#) .

The Bill as passed by Lok Sabha has incorporated some of the recommendations of the

Department Related Standing Committee on Personnel, Public Grievances, Law and Justice.

The Lok Pal Bill, 2011, introduced in the Lok Sabha on August 4, 2011, was withdrawn by the government. PRS prepares a note of comparison of the Lok Pal Bill, 2011; the Standing Committee Report on the Lok Pal Bill; and the Lok Pal and Lokayuktas Bill, 2011. Also, prepares a note of comparison of major differences between the Lok Pal Bill 2011 and the Lok Pal and Lokayuktas Bill, 2011.

- The Lokpal and Lokayuktas Bill, 2011, introduced on December 22, 2011, was passed by the Lok Sabha on December 27, 2011. The Bill was taken up for consideration and passing in the Rajya Sabha, which referred it to a Select Committee (Chairperson: Shri Satyavrat Chaturvedi). The Committee is scheduled to submit its report by the last week of the Monsoon session.
- The Bill provides for establishment of the Lokpal at the centre and Lokayuktas in the states for inquiring into complaints of corruption against certain public servants. The Bill, once passed, shall be applicable to states if they give their consent to its application.
- The members of the Lokpal (Lokayuktas) shall be appointed by the President (Governor) on the basis of the recommendations of the Selection Committee.
- The Selection Committee for the Lokpal shall comprise of the Prime Minister (Chief Minister), Speaker of the Lower House, Leaders of the Opposition of the Lower House, the Chief Justice of India (Chief Justice of the High Court) or a judge of the Supreme Court nominated by him, and an eminent jurist nominated by the President (Governor).
The Bill makes it mandatory for the Selection Committee to constitute a search

committee of at least seven members. At least 50% of the members shall be from among SC, ST, OBC, women or minority communities. The Selection Committee may consider a candidate other than one recommended by the Search Committee.

- The Lokpal and Lokayuktas shall consist of one chairperson and up to eight members. The Chairperson shall be the CJI or a present or former judge of the Supreme Court or a non-judicial member with specified qualifications (Chief Justice or a Judge of a High Court). Fifty percent of the other members shall be judicial members (judges of the Supreme Court and Chief Justices of the High Court in case of Lokpal and judge of a High Court in case of Lokayuktas). A non-judicial member is required to have 25 years experience in anti-corruption policy, public administration, vigilance and finance.
- At least 50 per cent of the members of both bodies shall be from among SC, ST, OBC, minorities and women.
- Members of the Lokpal may be removed by the President after an inquiry by the Supreme Court. The Supreme Court may inquire based on a reference from the President. Such reference may be made by the President on his own, or on a citizen's petition if the President is satisfied by it, or on a petition signed by 100 MPs.
- A Lokpal can enquire into offences under the Prevention of Corruption Act, 1988 (PCA) committed by:
 - the PM with specified safeguards,
 - current and former Union Ministers,
 - current and former MPs,

- group A, B, C, D officers,
- employees of a company, society or a trust set up by an Act of Parliament, or financed or controlled by the central government.
- employees of association of persons that (i) have received funding from the government and have an annual income above a specified amount; or (ii) have received public donation and have an annual income above a specified amount or received foreign funding above Rs 10 lakh a year.
- An inquiry against the PM has to be held in-camera and approved by a 2/3rd majority of the full bench of the Lokpal. The PM cannot be investigated if the complaint is related to international relations, external and internal security, public order, atomic energy and space.
- The Lokayuktas shall have jurisdiction over the CM, Ministers, MLAs, all state government employees and certain private entities (including religious institutions).
- The Lokpal's inquiry wing is required to inquire into complaints within 60 days of their reference. On considering an inquiry report the Lokpal shall (i) order an investigation; (ii) initiate departmental proceedings; or (iii) close the case and proceed against the complainant for making a false and frivolous complaint. The investigation shall be completed within 6 months. The Lokpal may initiate prosecution through its Prosecution Wing before the Special Court set up to adjudicate cases. The trial shall be completed within a maximum of two years. The Bill specifies a similar procedure for Lokayuktas.
- The Bill removes the requirement of sanction for initiating investigation and prosecution.

- The Bill penalises false and frivolous complaints with imprisonment for a maximum of one year and a fine of up to one lakh rupees. The Bill amends the PCA to enhance penalties for a public servant for corruption from maximum of five years to seven years. For criminal misconduct and habitually abetting corruption, the jail term is increased from seven years to ten years.

MCQs

1. Basic concept of delegation of power denotes delegation of which of the following power
 - a) Administrative Power
 - b) Rule making power
 - c) Judicial Power
 - d) Voting power
2. In which of the following the supreme court held the constitutional validity of supreme court of India ?
 - a) Namit Sharma v Union of India
 - b) CBSE v Aditya
 - c) ICAI v Shaunak Satya
 - d) None of the above
3. . in which of the following has the supreme court reviewed its own judgment and held that it is not necessary to have judicial officers alone as the members of central or state information commission?
 - a) Namit Sharma v Union of India
 - b) CBSE v Aditya
 - c) ICAI v Shaunak Satya
 - d) None of the above
4. in which of the following the supreme court held that chief information commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the information commission , he will ensure that the matter is heard by information commissioner who has wide knowledge and experience in the field of law ?
 - a)CBSE v Aditya
 - b) Namit Sharma v Union of India
 - c) ICAI v Shaunak Satya
 - d) None of the above
5. in which of the following cases , Supreme court held that that the information regarding the personal matters pertaining to career or service need not be disclosed under RTI unless there is public interest.
 - a) girish ram Chandra deshpandey v CIC
 - b) CBSE v aditya
 - c) ICAI v Shaunak Satya

