CHAPTER 1
OMBUDSMAN: ORIGIN, MEANING AND DEVELOPMENT

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1.1 INTRODUCTION

This introductory chapter is divided into three sections. The first section covers the problem formulation and importance of the subject which is necessary for going to the second chapter; i.e. Lokpal in India. Rising corruption is at the root of Ombudsman system world over including India. Hence, the second section discusses on the basic concept of corruption and maladministration in Indian scenario in the ancient and modern days. It also provides the list of Corruption Perception Index published by Transparency International. The third section makes a review of the worldwide Ombudsman system.

SECTION 1

1.2 PROBLEM FORMULATION

Corruption is all-pervading. No society is above corruption and no political system is immune to it. It is said that corruption is deeply rooted in human nature. Since time immemorial efforts have been made to curb and control corruption. The saints, the prophets all over the world preached virtues, preventing misconduct, irregularity so as to strengthen honesty, sincerity and integrity in administration. However, all such efforts seem to have gone in vain. Society without corruption has remained a distant dream. In such a situation the only alternative is that of building up more and more institutions like Ombudsman.

As many as 15 States in India have adopted 'Lokayukta' – a public grievances redressal institution formed on the basis of Swedish
Ombudsman. The present study is an effort to highlight the problems related to the Lokayukta and Upa-Lokayukta of Maharashtra. There has been considerable delay in this country to evolve the institution of Lokpal at national level. The politicians, academicians have time and again expressed their doubts on the jurisdiction and functioning of Lokpal. The nation has witnessed hot debates on the floor of the House about the vital areas concerning the institution, such as should the Prime Minister be under the purview of the Lokpal? As a result, it happens in respect of other issues, the Lokpal Bill has become a toy in the hands of the politicians. It could not be passed for the last 35 years. As against the merits of the Bill and the institution, party politics and petty considerations always prevailed and the result is that country has remained without Lokpal on the eve of the 21st century. It’s a matter of deep concern as to why the bill is delayed? What would be the rightful jurisdiction and the framework of the working of the proposed Lokpal? Taking into consideration the allegations made against the Prime Minister in recent period, the question of inclusion or non-inclusion of the Prime Minister within the purview of proposed Lokpal has become very sensitive. In the prevailing atmosphere can Lokpal work independently and free-from executive control?

To establish Ombudsman is one thing and its effective functioning is something different. We have Lokayuktas appointed in as many as 15 States and they have been functioning for the last 2 to 3 decades. Hence, over a period of time, many vital issues have come up. This study goes into some of these issues in general and pertaining to Lokayukta in Maharashtra in particular.
The vital question is to what an extent Lokayuktas have been able to control corruption and curb maladministration in the states? What types of cases the Lokayukta in Maharashtra deal with? There is lot many factors that do not appear in the formal reports of the Lokayuktas submitted to State Legislatures such as the response of the departments, attitudes of the functionaries, etc. The complainants are at receiving end and the fate of the disposal of their complaints largely depends upon the co-operation of the concerned departments. Here, the aggrieved persons come across many odds and difficulties, such as non-payment of compensation for lands acquired by government, delay in fixation of pay, delay in pension, non-receipt of medical allowances, bribe for getting the bills, sanctioned etc. There is always a scope for probing into such matters.

The effectiveness of Lokayukta has its bearing on the relationship of the Lokayukta and functionaries in the Mantralaya including the Chief Minister and the Ministers concerned. Therefore, the question is, whether the government is positive about the working of Lokayukta in Maharashtra? Could we get the impression that the office of the Lokayukta is strengthened due to active help and proper response by the ministers and bureaucrats.

In European countries, Ombudsman feels confident about its independent and impartial working similar is the case in respect of Lokayukta in Indian states.

1.3 IMPORTANCE OF SUBJECT

In the light of such experience, efforts have been made in this study to analyze how far Lokayukta is successful in controlling corruption and
ventilating the grievances of citizens in the state for corruption free democratic society.

It is significant to note that there has been hardly any effort made so far to review the working of institution of Lokayukt in Maharashtra for research. For academic study the institution has not attracted the attention of scholars, academician or media also. It seems, as a matter of fact, Maharashtra is the first state establishing the office of Lokayukt. Hence, there is a dire need to undertake such a study which may fulfill by present research. This study has critically focused on the jurisdiction, functions and limitations of the Lokayukt, as well as his role in curbing corruption and preventing maladministration. It can be humbly said that this is the first effort to focus the Lokayukt institution in Maharashtra academically. It attempts to know how far Lokayukt is a good redressal of public grievances. It can also be considered as the part of administrative reforms taking place for last 30 years in the country. The overall purpose of the study is also to know the confidence and trust of the people towards Lokayukt on the background of European countries.

In European countries, people have confidence in Ombudsman, which represents the participatory administration. Further study of Lokayukt in Maharashtra will help to create awareness among the people and the government departments towards the sensitive issues of controlling corruption and curbing maladministration by the Lokayukt. A common man faces many administrative problems in his daily life. Besides these, due to bribery, favoritism, nepotism he is trapped further and hardly gets a prompt and quick administrative reply. On the other hand, the administrative officers come across
many difficulties while working with those who hold power. On this background, it is important to understand the role of Lokayukta to help the common man. Hence, this study will prove useful.

As it is said, power corrupts and absolute power corrupts absolutely. In such a situation, an honest functionary cannot function effectively. The obvious result is the nexus between corrupt politicians and corrupt bureaucrats. It is therefore, important to study the function and role of the Lokayukta in view of such nexus.

1.4 OBJECTIVES OF STUDY

This research tries to understand the old problem in a new way i.e. corruption is an old problem and Lokpal/Lokayukta is a new way. The subject is important considering the hurdles in the way of establishing Lokpal at the center and effective functioning of the Lokayuktas at the state level. Following are the objectives of the study:

It attempts:

1] To understand the need and working of the institution of Ombudsman.

2] To go into analysis of the reasons as to why an appointment of Lokpal at the center has been delayed.

3] To examine the proposed Lokpal bill with Lokpal as the sentry of democracy in the context of citizen’s grievances against administration as well as their charges against those who hold power and authority.

4] To examine the role of the proposed Lokpal in handling the growing corruption.
5] To review the emergence and working of Lokayukta in Maharashtra.

6] To review the jurisdiction as stated in the Act as well as in practice analyze the cases of corruption which could not be considered by Lokayukta in Maharashtra.

7] To understand the relationship between the Lokayukta and the Cabinet, the Lokayukta and the Legislature, the Lokayukta and Judiciary in Maharashtra.

8] To evaluate the overall role of Lokayukta in administrative structure of Maharashtra as a safeguard and protector of citizens.

With these objectives, a humble effort will be made to give a few suggestions for the sound and effective functioning of Lokayukta in Maharashtra.

Efforts will be made to realize these objectives in the light of the findings of the study. Efforts will also be made to bring out the weaknesses and limitations of the institution of Ombudsman if any in Indian situation.

1.5 HYPOTHESES

In order to fulfill these objectives, a few workable hypotheses are presented-

1) More effective, the Lokayukta, is greater is the possibility of reaching at the deep roots of corruption with a view to overcome the problem of corruption.
2) It is only through the appointment of impartial person of integrity as Lokayukta, the purpose of reducing corruption and ventilation of citizen’s grievances will be fulfilled.

3) The degree of success of Lokayukta is directly related to the availability of adequate investigation officers at his disposal and required response from the Government in this regards.

4) It can be pleaded that greater the number of complaints, citizens lodge to the Lokayukta, fuller will be utility of this office.

5) The effectiveness of Lokayukta depends upon timely, adequate information supplied to it by the government departments.

6) Straining relationship between executives and Lokayukta, leads to obstacle in the way of his functioning whereas sound relationship results into speedy and effective results.

1.6 REVIEW OF LITERATURE
To get an overall picture of the Lokpal institution and to clear the concept and its scope, it is proposed to survey the literature on related subjects in general and Maharashtra Lokayukta in particular.

1.6.1 LITERATURE ON OMBUDSMAN
Ombudsman is a worldwide experience. Nearly, 152 countries are the members of ‘International Ombudsman Institute’. It means, nearly 152 countries have adopted Ombudsmanship. There are some books available on this subject.
1.6.1.1 BOOKS ON OMBUDSMAN

'Ombudsman and Others' by Walter Gelhorn is a classic. Gelhorn, a distinguished lawyer and authority on public administration, presents his thorough observations of the research on Ombudsman institute in 9 countries that reduced conflicts between citizens and administration. Those 9 countries are Sweden, Finland, Denmark, New Zealand, Norway, Japan, Poland, USSR and Yugoslavia. The findings of Gelhorn in this regard are:

1] Ombudsman is a bold guardian of citizens.

2] Ombudsman system in these Scandinavian countries resulted in reducing corruption so much so that there are few occasions of corrupt incidents there.

3] In Sweden, Ombudsman's annual reports are presented in an edition of 3,400 copies and are made available to the scholars, libraries, journalist, judges and administrators. But the readership is a very few. The reports are not read widely.

Finally, he noted that one of the Ombudsman’s important accomplishments is achieving uniformity.¹

One of the important works done by Frank Stacy on British Ombudsman is notable. He studied and observed the working of 4 years of British Ombudsman in his study entitled. 'The British Ombudsman'.

According to him, the Parliamentary Commissioner (British Ombudsman) had solved the problems of maladministration. However, he criticized that many cases left unresolved also². This is a major drawback of British Ombudsman according to the author.
Rowat Donald, an expert in Public Administration wrote two books: one is 'Ombudsman' and another is 'The Judicial Ombudsman'. He pointed out that Ombudsman can arouse the confidence of the people in the democratic government. He supported Ombudsman system as the safeguard against the individuals engaged in corruption and irregularities. Executive is under Ombudsman’s control in several countries; but how to control judiciary remains. In Alaska, courts are under Ombudsman’s purview. Ombudsman’s Annual Report in Alaska reveal that in 1990- out of 7600 cases loaded to him, 120 dealt with the courts alone. It means, nearly 2% cases per year are dealt with the courts. In Sweden and Finland, Ombudsman can directly supervise the behavior and procedure followed by the Judges. Of course, should the courts be under Ombudsman’s purview or not is still a controversial issue there.

These are some of the books available on world Ombudsmanship. Besides these, in some national and international journals, there are some articles on this subject.

1.6.1.2 OMBUDSMAN AS PRESENTED IN ARTICLES OF JOURNALS

Gerald Caiden in the ‘International Review of Administrative Science’ noted that Israeli Ombudsmen did a good job to humanize the citizen’s relations with impersonal government authority. According to him, Israeli Ombudsman insists powerfully on public rights and asks him to stand against politicians and officials. Israeli Ombudsmen are proud of their work; whereas, Nigerian Ombudsman
is a unique experience. In Nigeria, there are no limitations on how complaints are lodged with the Ombudsman. Ladipo Adamlokan noted in his article, ‘The Nigerian Ombudsman’,
“...its structure of a Chief Commissioner at the national level
co-ordinating with the work of Commissioners at the state level,
is a response not only to the federal nature of the country, but
also to the extensive scope of responsibility covering public and
private organizations throughout the country.”
Another notable feature is that Nigerian Ombudsmen themselves as
well as the students of ‘Ombudsmen Institution’ give an adequate
publicity of their functioning so that potential beneficiaries might
know existence and the achievements of the institution, overall world
experience of Ombudsman by every account has increased public
confidence towards administration.
“.... The Ombudsman has to make officialdom and the
government meaningfully, respond effectively.”
is a suggestion made by Rowat Donald in an article.
‘Maladministration : Issue For The Ombudsman,’ in ‘The Australian
Journal of Public Administration’. So far as the reports and
recommendations of the Ombudsmen are concerned, major limitation
of the institution is its reports are recommendatory rather than
mandatory. Further limitation can be pointed the types of cases the
Ombudsmen deal with. Yardley in article ‘Ombudsman in UK’
published in IJPA says,
“....the majority of Ombudsman cases are concerned with
comparatively minor matters such as delay in assessing tax
liability, failure of repair a council, flat adequately, normal procedure in dealing with planning application...”

Thus, the material on Ombudsman available in different books and journals throw light on both positive and negative aspects on the working of the Ombudsman.

1.6.1.3 WEBSITES ON OMBUDSMAN

There are some Web pages launched on Ombudsman in various countries. The entries and notes are important as the latest information on worldwide Ombudsman experience.

In Finland, the least corrupt country in the index of ‘Transparency International’, Ombudsman is an autonomous administrative unit attached to the Parliament.\(^9\) It is supported by the logistical service of Parliament. In Finland, Ombudsman can observe the administration of justice also. Its powers are extended to the purview of the President.

In Sweden, Ombudsman is a Legislative Commissioner for investigating citizens’ complaints of bureaucratic abuse.\(^10\) It is independent, impartial and arbiter between government and the individual. In Greece, the Ombudsman was established in 1996. The period of 6 to 7 years, it exercises real control over the administration and proved its importance as well as protection to citizen’s rights.\(^11\) It is accountable to the citizens in Greece.

In New Zealand, Ombudsman is accountable to the Parliament.\(^12\) In European countries, there are some private Ombudsmen, local Ombudsmen and Ombudsmen for the departments.
In the USA, there are several types of Ombudsmen. For example, Colorado, Chicago, Texas, Kansas Universities have Educational Ombudsman. The Chicago University is the first that introduced the Educational Ombudsman. The Students Ombudsman is salaried-part time official.\textsuperscript{14} The Students Ombudsman is selected from the students only. He works with the students and administrator or faculty members.\textsuperscript{15} His main purpose is to bring attention to injustices done or abuse of discretion. In Kansas University, Ombudsman can consider all sides of a issue in an impartial and objective manner in order to resolve it and concerns raised by any member of the University Community.\textsuperscript{16} There is a provision for Ombudsman in ‘University Senate Rules and Regulations’ of Kansas. The Ombudsman for Education is the channel of student’s satisfaction.\textsuperscript{17} It is strongly committed to maintain confidentiality. In Colorado University, Ombudsman is the third party who assists faculty, staff, administrators and students.\textsuperscript{18} Besides these Educational Ombudsman, there are other Ombudsmen in the USA. The Crime Victims Ombudsman is to attempt and ensure that all crime victims are served justly, equitably by Carolina’s Criminal Justice Organizations.\textsuperscript{19} Crime Victim Ombudsman is neither an advocate nor a defender of bureaucracy. Detroit city in the USA has its Local Ombudsman. It is an independent city agency.\textsuperscript{20} It evaluates both sides of citizen and government. Michigan state has Legislative Correction Ombudsman. It is an agency of the Michigan Legislative Council to provide the Michigan Legislature with oversight of the Michigan Department of Corrections.\textsuperscript{21} There is also the Funeral Ombudsman which was
introduced in the USA in May, 2000. The Long Term Care Ombudsman is to advocate for Nursing Home Residents and others who receive Long-Term care services. Its programme is mandated by the ‘Older Americans Act, 1971’. It deals with the people who live in nursing homes. The city Kentucky has Small Business Ombudsman. It provides Public information and education about the free services available in small business. Like the USA, the UK also has several types of Ombudsmen. The Police Ombudsman is an independent police complaints system for the public and police. The Prison and Probation Ombudsman office is for prison services ad national probation services. There is Ombudsman for Pension in UK. There are also the Local Government Ombudsmen... they not only deal with complaints but also issue an advice to the local government in any matter. In England, there are 3 local government Ombudsmen. The UK also has Funeral Ombudsman like the USA. He is a solicitor with wide experience in the consumer field as a consultant to a variety of organizations. The Insurance Ombudsman which is also called ‘Financial Ombudsman’ resolves the unresolved disputes and complaints concerning endowment mortgages. The Ombudsman for Estate Agent is devised to address disputes between member agencies and consumers who are actual or potential buyers or sellers of residential property of the UK. The Banking Ombudsman deals with banking matters. The Pensions Ombudsman deals with the disputes in the pension schemes. The sale and marketing of pension scheme is the main area of working of Pension Ombudsman. Its
decisions are always final and binding on all parties. There is a Dental Ombudsman in South Africa. It deals with the practitioners and patients.\textsuperscript{31} Australia has Mining Ombudsman who deals with Australian Mining Industry. It tries to prevent human rights abuses in mining industries.\textsuperscript{32} It has the capacity to investigate the complaints of mining companies operating overseas. Germany has the office of Ombudsman for Disability. It works to achieve the general objectives of disability policy. It aims at full participation and equality for people with disabilities. In Sweden, Children Ombudsman is to safeguard the rights and interests of children.\textsuperscript{33} Its activities focus on UN Rights of child information, implementation and application. Korean government has set-up Ombudsman for Investment by the enactment of the Foreign Direct Investment Promotion Act, 1998.\textsuperscript{34} It resolves the difficulties of foreign companies that invested in Korean Companies. European countries lead Ombudsman not only in the government sector but also in the private.

India doesn't have Ombudsman in the government sector at the Central level. But, Reserve Bank of India and Life Insurance Corporation have their own Ombudsmen. The Ombudsman in RBI deals with the banking matter under the banks of RBI only.\textsuperscript{35} Customer's problems such as saving accounts, loans, etc. are dealt with by this Banking Ombudsman. Insurance Ombudsman in LIC deals with the problems related to the insurance policy matters.

To compare with the European countries, Indian Ombudsman i.e.; Lokayukta in the states are not quite popular. There is a constant demand for Ombudsman at the central level i.e.; Lokpal but is in vain.
since last 35 years. At the state level, 15 States have implemented the Lokayukta system. [It is discussed in chapter II ]
All the above said countries are the members of IOI and some are of EOI. European Ombudsman Institute (EOI) aims to promote and disseminate the concept of Ombudsman in the European countries.\textsuperscript{36}
It is a non-profit making scientific organization. In the European countries International Ombudsman Institute (IOI) promotes the Ombudsman system throughout the world. The members of the IOI are bound by the ethics of the institutions.\textsuperscript{37} The IOI makes it compulsory that the person holding a chair of Ombudsman must be impartial. It tries for the independence, flexibility, accessibility and credibility of the Ombudsmen.\textsuperscript{38} The institute organizes workshops, conferences and seminars
This survey of literature available through books, journals and web pages on Ombudsman is concluded as below:

1] Ombudsman is an unique experience in the Scandinavian, European, African and Australian countries.

2] Ombudsman is effective in those countries in the government as well as private sectors also.

3] Ombudsman affects a whole life from Children Ombudsman and Funeral Ombudsman.

4] International Ombudsman Institution (IOI) as well as European Ombudsman Institution (EOI) are trying best to popularize the Ombudsman institute.
1.6.2 WRITINGS ON PROPOSED LOKPAL IN INDIA

Though there is Ombudsman in Banking and LIC as well as Lokayukta in Indian States, there is no Ombudsman machinery at the central level in India. The issue of establishment of Lokpal has been under consideration for the last 35 years and so. Whenever the Bill is discussed in the Lokasabha or Rajyasabha, media gives a wide publicity to the discussion. Otherwise, the issue is almost forgotten. There is a very little discussion on the Lokpal and also a scanty literature is available on the issue. However, some of the books and articles those are available, are discussed here.

1.6.2.1 BOOKS ON PROPOSED INDIAN OMBUDSMAN

When 'Lokpal Bill' had been passed in the Loksabha it was put up before Rajyasabha in 1969. M.P. Jain, a scholar in Public Administration published his study namely 'Lokpal : Ombudsman In India' in 1970. He referred to the growth of the idea of Ombudsman in India. He examined the report of the Administrative Reforms Commission on this issue\(^{39}\). His observations on the Ombudsman machinery are:

1] Ombudsman can give relief on many more grounds than the courts can do.

2] A person who is appointed as the Ombudsman must command confidence of both the ruling party and the opposition party.

3] Ombudsman is required to be politically neutral.

D.R. Saxena examined the Lokayukta in 12 Indian states and published a book 'Ombudsman : A Redress Of Citizen’s Grievances'.
He observed that this Ombudsman like institution has become neither popular nor effective in all the states. He raised a doubt, whether the states should continue the institution or not.\textsuperscript{40} His is a very remarkable and important observation in this study. Girdhar B. Sharma is one of the scholars who studied on Ombudsman plan in India. He wrote a book ‘Implementation of Ombudsman Plan In India’. He critically examined the concept of Ombudsman in addition to the Lokpal Bill, 1971 and 1977.\textsuperscript{41}

Some of the suggestions he made are include:

1] Lokpal should be given constitutional status.
2] Ombudsman system should be obligatory for center as well as for all states.
3] Ombudsman should not be mere formality but an instrument of democratic working and safeguard for citizens’ rights.

Giridhar B. Sharma finally argued in bringing Ombudsman in India.

‘Citizen Administration And Lokpal’ by Jagmohan and Makhija is a systematic study of Lokpal in India. The authors strategically pointed out the establishment of Lokpal.\textsuperscript{42} For a speedy and satisfactory redressal of citizen’s grievances, Lokpal is recommended. R.K. Dhawan in his book ‘Public Grievances And Lokpal’ also stressed on the same.

‘Ombudsmen’ edited by IJPA is a collection of the Colloquium on the topic which was jointly organized by the British Council Division and the Indian Institute of Public Administration. All the above said studies are old except this one.
1.6.2.3 ARTICLES IN JOURNALS ON PROPOSED LOKPAL

Corruption is everywhere. In Malaysia, South Asia, Japan, Indonesia and Thailand bribery is on a large scale and it has developed certain pattern. The bribe-taker is reasonable, even refunding the pay off if he fails to deliver.

In India, Social ethics are conveniently set aside when incidents of corruption and bribery take place, is an observation noted in the editorial article of "The Southern Economist". Josseph Ponnoly wrote in CBI Bulletin,

"...The Judiciary itself has now stepped into stem the tide of corruption which has become wide-spread an unquestioned way of life for the politicians and the officials in every field of public administration" 43

It includes the absence of independent grievance redressal machinery in India and it is high time for our country to have its own Ombudsman. Some scholars suggested changes in the Lokpal bill. One of the changes suggested in the editorial of 'Radical humanist' is that, the Lokpal must have its own investigating machinery 44. The Lokayukta in some states does not have investigating agency. P.K. Gopinath has also suggested that the Lokpal should have legal powers to prosecute an accused to the minister.45 S.S. Tiwana in an article in 'Administrative Change' criticized that not any government in India is serious on this issue.46 But, there is a continuous demand for Lokpal. According to an article published in the Journal of 'National Academy of Administrative Science', the launching of the institution of the Lokpal is a great experiment of the organized society by attempting to humanize administration47. It is suggested by experts that the
Ombudsman system should be two-tired in India. S.S. Singh suggested that the Lokpal Bill can be 'Permanent Commission on Political Corruption'. He published an article in Indian Journal of Public Administration on the Lokpal. In India, such a watchdog is necessary. U.C. Agrawal in his article in 'Indian Journal of Public Administration' suggested that the success of Lokpal depends on the caliber, character and competence of the person to run it. V.M. Sinha in his article published in 'The Journal of Political Science Review' emphasizes on the need for introducing Lokpal in India. He noted his expectation that Ombudsman should be a representative of the parliament to supervise the observance of laws and status. He points out the role of proposed Lokpal and his constant efforts to see that the people get a good and satisfactory government.

Lokpal in India has been criticized theoretically and practically. The objectives of Ombudsman device are to make administration free from corruption and maladministration. Haridwar Rai & S.P. Singh stressed on the objectives and to make it responsive to the wishes of people in an article in 'Indian Journal of Political Science'. But it is difficult in Indian scenario. Partisan spirit is so dominant in the Indian political system. The politicians and their supporters among the public will not react positively to the presentation of the facts laid by the Ombudsman involving in legal administrative injustice is an observation made by Shanthinaoy Shail in the 'Calcutta Journal of Political Science'.

There is an article on corruption in ancient India in 'The Journal of Parliamentary Information'. The author points out,
"...the idea of check on the excess or misuse of power by officers of the state had not only germinated but had blossomed in ancient India, centuries before the Christian era."\textsuperscript{53}

The author has visualized the functionary similar to modern Lokpal institution in India. Hence, one can say that the concept of Lokpal is totally not new for the Indians. Ombudsman is located in some cities of India. It acts as an overseer and a regulatory body.\textsuperscript{54} These are a few articles on Lokpal in India published in the journals and magazines.

\textbf{1.6.2.2 WEBPAGES ON LOKPAL IN INDIA}

Very few web pages are available on the Indian Lokpal. On occasion of election in 1999 Bhartiya Janata Party launched various web pages. One of them is on Lokpal issue. The government of Mr. Vajpayi introduced the ‘Lokpal Bill’ in 1999 and declared that he himself wanted the Prime Minister under Lokpal’s purview.\textsuperscript{55} But it was not materialized in his tenure.

Union Home Minister argued (Aug.18, 1969) that the real authority for the removal of the Prime Minister is Parliament so neither Lokpal nor Lokayukta have authority in this sense.\textsuperscript{56}

This issue of inclusion of Prime Minister under Lokpal’s purview is in a hot debate even today. On September 13, 1996, S.R. Balsubramniyam, the then Minister of Parliamentary Affairs put it in the Loksabha with the support of inclusion of the Prime Minister.\textsuperscript{57} But Again, it was not passed.
Mr. Devegoda, the then Prime Minister also promised to strengthen Indian anti-corruption agencies through Lokpal. Besides the promises of all the Prime Minister, the Lokpal bill is not yet passed. But the Banking Ombudsman in Reserve Bank of India and Insurance Ombudsman in LIC are established. The Banking Ombudsman has been appointed to receive the complaints relating to provision of banking services.

These are some web pages on the proposed Lokpal in India. The Loksabha debates 1969, 1996, 1971, 1974 and 1979, 1985, 1996, 1998, 2001 as well as the report by the Joint Select Committee provided important information relating to Lokpal Bill. All the information available on this issue makes a loud outcry on the formation of Lokayukta.

Thus, a very scantly literature is available on Lokpal in India.

1.6.3 LITERATURE ON LOKAYUKTA IN INDIAN STATES

India has Lokayukta in 15 States. Some notable literature relating to them got available for this study.

1.6.3.1 BOOKS ON LOKAYUKTA

There is only one study on this issue made by Dr. Mary Parmar on Lokayukta in Himachal Pradesh. The cases handled by the Lokayukta imitate the administration in Himachal Pradesh. It bring the cases of allegation in the eyes of public. Though the Lokayukta in Himachal Pradesh has positive features, it also have weaknesses. The Himachal Pradesh Lokayukta needs more authority in respect of personnel policies of his office.

K.S. Shukla and S.S. Singh make one more study. This book covered Lokayukta in 10 states in India. The study discovers that the
institution has not been as effective as was expected and recommends various measures to strengthen it.\textsuperscript{61}

These are books available on Lokayukta in the states in India.

1.6.3.2 ARTICLES IN JOURNALS ON LOKAYUKTA
There are the articles in journals which focused on the Lokayukta in the Indian states. In Kerala, Ombudsman for Local Government constituted as per ‘Kerala Panchayat Raj Act.’\textsuperscript{62} Ombudsman can take care of ordinary Citizens in Kerala. It provides a flexible and largely informal method of obtaining judicial remedies without the need of formal and often-expensive procedural wrangles in the court process.\textsuperscript{63}

One more article published by Mary Parmar in Indian Journal of Public Administration which is a paraphrase of her above-said book on Himachal Pradesh Lokayukta.

Thus, the number of articles published on Lokpal in journals is very less.

1.6.3.4 ARTICLES IN NEWSPAPERS ON LOKAYUKTA
The news, features and articles in the daily newspapers are also very useful to throw light on functioning of Lokayuktas with their weaknesses and positive points. The institution of Lokayukta in Punjab was caught in the crossfire between two political parties in 1992 when it reported against 3 ministers.\textsuperscript{63}

In Karnataka, MLAs are not under Lokayukta’s purview. S.M. Krishna, Lokayukta, Karnataka wished to bring it up.\textsuperscript{64} According to him, Lokayukta in Karnataka needs to be set its functioning. In Andhra Pradesh, All India Civil Services are excluded from
Lokayukta’s purview 75% of the petitions are related only to abuses of power, etc.  

A few articles are published on Lokayukta in Maharashtra. ‘The Hindu’, ‘The Times of India’ and ‘The Indian Express’ have published some of them. However, regional newspapers have not covered matters on Maharashtra Lokayukta largely. May be they are unaware of the importance of this institution. There are also some websites on Maharashtra Lokayukta. But it is simply the collection of newspaper articles/news. Internet is one of the main sources of collecting information on Ombudsman but there is no information available on Lokayukta on web pages.

Thus, the literature on Maharashtra Lokayukta is scanty. Hence, this study is mainly based on primary data; i.e. government documents and the information provided by the Lokayukta office.

The debates in the Legislative Assembly on Lokayukta Bill provides important data. The Lokayukta Bill was presented in the Assembly in 1971 and was passed. The Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 is a squeezed literature in this study. The rules and regulations on the appointment, removal, tenure, salary, staff, position, jurisdiction, functions, etc. are given in the Act.

The Annual Consolidated Reports constitute another important source for this study. Actual information of the office, its working and limitations are revealed from such information. The annual budget of government of Maharashtra for 1999, 2000, 2001 also proved important for this study.
Due to the secrecy followed in the office of Lokayukta, the addresses of the complainants which are useful for the study could not be obtained.

Thus, while reviewing the literature on the study, it is clear that a lot of web pages are available on Ombudsman but a very few books, articles in newspapers, journals and periodicals are available. This study of Lokayukta in Maharashtra is based largely on primary data.

1.6.4 OTHER READINGS

For this study, the co-related literature on topic such as corruption is equally important, as it will be useful. Bhure Lal in his book ‘Corruption : Functional Anarchy in Governance’ analyzed various factors responsible for corruption in Indian society. He pointed out various attributes for rising corruption such as unrestrained authority, monopoly, power, lack of accountability, absolute political power, perverse inclination of officials, personal loyalties over objective rules, instability in government and concentration of political and economic powers in a few hands. Many thinkers and authors tried to define corruption as ‘multi-faced Social Phenomenon with innumerable manifestations. Corruption is pervaded in every walk and form of life. The canal man is required to pay fixed amount even for supplying water. The Patwari is to be paid for any work of making records, verifying land holdings, etc. which is his duty. According to Syed Alatas Husain, Corruption is a crucial problem. It requires the crucial changes that need to go further than just changes in personalities and parties in power. Corruption is as old as the history of human civilization. According to him,
“... A corrupt administrator is no longer only a financial liability, but is also a moral sore that saps the vitality of his personality.”

‘Indian Panorama: Triumphs and Tragedies’, a book published on completing 50 years of independence focuses the role of CBI & CVC in India. It also throws light on scandals and incidents of maladministration.

"No one can accurately measure the extent of corruption in India.....", is the opinion expressed by Rajender Puri in his article, ‘Free At Last, To Loot And Plunder’. He pinpointed that only during Prime Minister Lal Bahadur Shastri’s tenure, any serious effort was made to fight against political corruption. His successor either avoided to fight or remained its supporters.

Some articles are also significant in this regard. One of the issue of ‘One India, One People’ s devoted to the issue of corruption. "Judiciary is the only institution in the country which has no public accountability...", is the opinion made by Arvind Bobde, Former Advocate General of Maharashtra. All the fields, such as politics, judiciary and bureaucracy have lost their accountability and credibility. There are some devices to control corruption, such as CVC, CBI, Anti-Corruption Bureau. etc CVC is effective one; but its basic weakness is that it doesn’t have statutory base. It needs a strong participation of people to control corruption and maladministration. The people’s participation may be described as taking part in the events taking, place in a community or a large area.
These are few articles on corruption in India, which throw light on Indian situation.

Transparency International is an agency which declares yearly the Corruption Perceptions Index. According to the index, India is 69th in rank of non-corruption in the world, and 7th in Asia. Besides the websites, there are some government documents, reports and acts on this subject. They include—

Report by the Santhanam Committee in 1964, the Prevention of Corruption Act, 1947; The Prevention of Corruption Act, 1988, Anti-Corruption Laws, etc.

1.7 RESEARCH DESIGN

A very purpose of this study is to understand the functioning and the impact of Lokayukta in Maharashtra. It is not sufficient for this purpose to read the Acts only. It is also necessary to study the impact of the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971. As per act, the machinery is expected to reduce the volume of corruption so that citizens, in various walks of life, are able to avail of the services on reasonable basis without fear or favour. In order to ascertain impact, it is proposed to make use of empirical method in this study.

Survey method is well suited to grasp the real situation. Hence, it is proposed to adopt the same for this study.

a) The Universe of the Study -

The citizens bring their complaints of corruption, maladministration, irregularities against officials to the Lokayukta. They come with their grievances, sufferings and harassment to the Lokayukta for his intervention with a purpose to ventilation of these grievances. Hence,
the complainants and the officials by and large, constitutes the universe for this study. It is through the survey of those complainants, we can understand and analyze the functioning of Lokayukta in Maharashtra. The important question in this regard is how to select complainants for survey. It was proposed to undertake a random survey of the complainants for the study. However, due to the secrecy maintained by the Lokayukta office under section 10(2) of the Maharashtra Lokayukta and Upa-Lokayukta Act, the sampling was not possible. That is the office of the Lokayukta did not provide up-to-date year wise lists of the complainants with details who approached the Lokayukta for their grievances and complainants so that a viable and random sample could be worked out. However, the annual Consolidated Reports by the Lokayukta proved useful for obtaining the names and addresses of complaints. There was no systematic list in the reports also. As a result the idea to prepare random sample was given up and the complainants were chosen from the names as given in the reports. Accordingly, 104 questionnaires were sent by post to these complainants. Similarly, 117 concerned authorities were also provided the structured questionnaire out of which 5 were served personally by the researcher and remaining were sent by post. Thus, the complainants and the concerned authorities which comprise of the universe for this study.

b) The Questionnaire –

For purpose of survey, two types of respondents were prepared; i.e. questionnaire for-

1) the complainants;

2) the concerned authorities.
The separate questionnaire was prepared for each of them.

1) Questionnaire for the complainants consists of questions pertaining to different aspects of Lokayukta institute.

2) Questionnaire for the concerned authorities has 2 sections. The first section consists of 23 questions, which can be answered by any of the successor of the concerned authorities. The questions relate to the working of Lokayukta. The second section is to be answered by that particular authority or the administrative officer concerning the complaints. The concerned authorities were requested to give details of investigation and the disposal of that particular case.

c) In Depth Interview-
   In addition to the survey of the complainants and officers the interview of the functionaries were necessary. Hence, the method of in-depth interview was adopted. The objective of the in-depth interview was to find the facts responsible for the working of Lokayukta institute in Maharashtra.

The respondents of in-depth interview were-
   i) Lokayukta of Maharashtra,
   ii) Upa Lokayukta of Maharashtra,
   iii) Ex-Lokayuktas of Maharashtra,
   iv) Ex- Upa Lokayuktas of Maharashtra,

In all 6 persons were interviewed as they were only available. These interviews helped us in cross-checking the information about the Lokayukta of Maharashtra which is available in the reports, acts and other literature.
d) Data Processing-
The answers given to the structured questionnaires and responses to the interview, questions were processed, tabulated and data gathered was computed. The following are the elements of data processing.

a) For the chapter related to the Ombudsman, the secondary data is used.

b) For Lokpal both some of the secondary and some primary data are referred.

c) The analysis of Maharashtra Lokayuktas is mainly based on the primary data. It covers the data collected from the sources such as the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971; the Annual Consolidated Reports of the Lokayukta and Upa-Lokayukta; as well as the survey of the complainants and the concerned authorities and the interviews of the present and former Lokayuktas and Upa-Lokayuktas. The entire data is processed for this study to go at conclusions.

1.8 CHAPTER SCHEME
The first chapter of the thesis is divided into 3 sections-
a) Section one comprises of the research methodology. It consists of problem formulation, importance of study, objectives, hypothesis, research design and the outline of the thesis including the chapter scheme.

b) Section two deals with the rationality of Ombudsman institute. The attempts have been made to define corruption and maladministration in this section. It also presents the Corruption Perception Index of the world and the Asian countries.
c) Third section takes the genesis of Ombudsman plan from its inception in Sweden in 1809. In addition to this, models of Ombudsman in the first 5 less corrupt countries in the list of TI are also presented. The second chapter titled ‘Lokpal in India’ is a historical sketch of the Lokpal which is not in existence. It is also divided into 3 sections –

a) The first section reviews the various machineries that are available at present to fight corruption and maladministration.


c) The third section throws light on Lokayukta system as it is existed in 15 Indian States.

The third chapter, which is the main chapter concerns with the study, is on Lokayukta in Maharashtra. The provisions and its implimentation of the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971 are discussed in this chapter besides, its limitations as well as difficulties in its effective functioning are also discussed.

The fourth chapter gives the profile of the fieldwork of the present research study. The explanation and analysis of the data collected through questionnaires and interviews is processed and tabulated.

The fifth and last chapter summarizes the entire material for analyses. The conclusions are drawn for entire study in this chapter. Finally, in
order to strengthen the institution of Lokayukta in Maharashtra some suggestions are also made to overcome the limitations.

SECTION 2
1.9 RATIONALITY OF INSTITUTION OF OMBUDSMAN
Corruption is a multilateral and systematic deficiency in a society. In a common speech, corruption is the phenomenon involving the act of something that is debased, impute and anti-ethical. Hence, it undermines the foundation of society. Corruption is all pervading in the sense that not a single country in the world can be described as non-corrupt and not a single department in any government is free from corrupt practices. No doubt, there is a wide discussion on how to tackle corruption and maladministration. Emergence of Ombudsman can be considered as an outcome of such discussion. In order to understand how does Ombudsman deal with these evils, it is necessary at the outset to go through the meaning of the terms maladministration and corruption through the ages.

1.9.1 MALADMINISTRATION
‘Mal’ is a Latin word used for ‘evil’ or ‘wrong’. Sir Edmund Compton, the first Parliamentary Commissioner of the UK pointed out, “....Maladministration is a dirty word with unfortunate association, conjuring up actions such as taking bribe or bias, or extreme example of bias or perversity.”

It is obvious that maladministration is an outcome of wrong doings and bad influencing. Red-tapism, errors in work, granting funds without receipts, ignoring own responsibilities, showing laziness,
cheating people by the politicians or bureaucrats are manifestations of maladministration. Mistakes, committing errors and high degree of oversights, wrong application of rules, failures in imparting vital information, giving misleading advice, wrong interpretation of departmental rules and regulations, unjustifiable delays, all these constitute maladministration. They certainly result into weaknesses and low profile of the administration as a whole.

'Cross-man catalogue' set up by Richard Cross-man, a British Parliamentarian, defined maladministration as,

"...bias, neglect, inattention, delay, incompetence, inaptitude, perversity, arbitrariness, might, count as maladministration."\(^{73}\)

The various manifestations of maladministration include bad rules, bad laws, improper use of power etc. Selfishness and personal gains are primarily at the roots of maladministration. Occasionally ignorance and clerical mentality also result into maladministration. However, all the forms of maladministration give birth to corruption. In fact, maladministration is the mother of corruption.

1.9.2 CORRUPTION IN ANCIENT DAYS

Corruption is all-pervading phenomena. It is observed all over the world. The malady of corruption prevailed in all periods of history; i.e. ancient, medieval and modern. It can be said that history of corruption is as old as the history of human being.

Kauthya, in 'Arthashstra' [4 B.C.] gives exhaustive list of practices and acts that can be termed corrupt such as,

"...causing loss of government, misuse of government property, misappropriation of revenue, falsification of documents,
obstruction in lawful process, exploiting the public, corrupting the officials, embezzlement, failure of supervision in work, false measurement, allocating expenditure under wrong Heads, cheating with weight, etc..." 74

Today, all these acts and many more are very much existing in the society.

In 120 B.C., Hamurabi of Babylon talks about inquiries into corruption cases - which indicate the existence of corruption in the Western countries. The Byzantine Emperor Justinian in 535 A.D. noted that he who pays for a job must sell his services. 75 By fifth century B.C., corruption had become a common feature in the political life all over Greece 76 With the opening of new opportunities for speculation in Greece, bribery and corruption were on increase.

The governors of provinces were paid low salary and therefore, they used to exploit the people for their own private material benefit. The Catholic churches were also used to sell priesthood in medieval times. Corruption was deeply rooted in the religious matters in the ancient and medieval times. In Aurangzeb’s period, to corrupt a judge was rendered for the first time a crime- the fees paid in the Courts of justice was ascertained accurately. 78 The medieval Indians and Westerners were also not free from corruption. It has risen to the high heaven in the Kuomintang rule in China where to get rich quickly was the supreme goal and no refinement of corrupt practices was neglected. 79 In those days, corruption was a problem in the society and administration; but was not as hot as in the modern times. Eventhough, it existed in the society, it was not defined terminology.
1.9.3 CORRUPTION IN MODERN DAYS

In ancient days, corruption existed and was discussed, but not as high and as frequent as in the modern days. In the modern days, corruption is an economic, social, political, administrative, cultural, religious phenomenon. There is hardly any corner in Indian life, which has not been defiled by corruption. There are a number of books, articles, and researches on the topic recently. There was a feeling of fear in olden days among people involved in corruption. Therefore, corruption was looked upon as a criminal deed which in modern society becomes a fashion. Political life in nineteenth century America was said to be more corrupt than in the preceding and following centuries in Britain. The high point of corruption coincided with the impact of the industrial revolution and the emergence of new classes in the eighteenth and early nineteenth centuries. The modernization and globalization in a way provided space for corruption. The scholars gave some of the definitions of corruption as following.

1.9.4 CONCEPT OF CORRUPTION

The phenomenon of corruption is multi-dimensional. Newer dimensions are added to it in the course of time. The views, the approaches, the typology, the definition, the stages, the manifestation of corruption are the matters of concerned for academicians, theorists, politicians since long time. An attempt has been made in the following lines to know above all there aspect so that we can proceed to fighting Indian situation of corruption.

According to World Bank,
"...a Corrupt practice is the offering, giving and receiving or soliciting of anything of value to influence the action of a public official in the procurement or in the extract execution." 80

B.S. Bindra looked upon corruption like cancer in the blood 81 – it needs major operation and lengthy treatment. Justice R.P. Shetty of Supreme Court in India views it like plague82, which is infectious; whilst A.B. Vajpayee, Ex-Prime Minister of India called it ‘malaria’ 83 in which medicine can be given to those who have been affected. It can prevent the breeding of mosquitoes of corruption. N. Vittal, Ex-Commissioner, CVC, India, quoted that corruption is like AIDS 84—a serious and dangerous disease in modern society. It spreads not only in the human physic but also in the psyche.

Prof. Syed Alatas Hussain called it ‘tidal’ corruption. 85 Like a tide this practice grows to immerse everything in its path. The tidal corruption multiplies the number of perpetrators of the illegal practice more rapidly than other types of criminal behavior. A question is raised as to who are prone to corrupt practices? It can be answered that normally the less salaried and highly greedy officers and politicians are in the mainstream of corruption.

It can be safely stated from these descriptions that corruption is something very serious, manispol in the society. Because men are selfish, they indulge in different kinds of corruption is a lesson from history.

There are different approaches given by the scholars and experts to look at corruption.86 The following are few of them as given in a webpage launched in Yahoo, a search engine on internet-
1) ‘Public-Interest-Centered’ approach of Rogow and Loswel, who said that corruption is highly injurious to public interest.

2) ‘public-Office-Centered’ approach by Theo bald stresses on the misuse of incumbency of public office for private gains.

3) ‘Market-Centered’ approach by Tillman states the norms of governing public office have shifted from free market to a mandatory pricing model. Thereby, it changes the nature of corruption.

4) ‘Legalistic’ approach, by Scott stresses on legal criteria in governing public interest, behavior and authority.

5) Gould’s ‘Moralist’ view says that corruption is immoral and unethical phenomenon that contains a set of moral aberrations from moral standards of society causing a lot of respect and confidence in duly constituted authority. It concentrates on the difference between good and bad in society.

6) Ceff’s ‘Functionalist’s’ view expresses that corruption flourishes as a substitute for the market system.

7) Lo’s ‘Social Centurist’ view (1993) expresses that to understand corruption, one should take into consideration the capacity of the state to produce particular form of social relations and their shifts.

8) Paverola’s ‘Social Constructionist’ view (1996) is a theoretical emphasis on the interplay of law, ideology and political economy. It also stresses corruption as a problematic factor that involves the corrupters in the system as well as in the political, economic and social considerations within which they function.

Both the social centurist view and constructionist view look at corruption as an abuse of authority of social-cultural variable.
If we try to identify the class of corrupt people from the various approaches and views given above, we come to know that the class of public officials, politicians, bureaucrats, businessmen, suppliers, contractors are the contributors in regularizing and institutionalizing corruption. This is a brief account of different approaches to look at corruption.

There are many functionaries in the acts of corruption adopting various modes of corruption. Therefore, their are different types of corruption. As an experienced Ombudsman of Pakistan and a learned judge, Alatas Syed Husain has given comprehensive typology of the phenomenon of corruption in his book entitled, “Corruption: Its Causes And Functions”,

1) Autogenic corruption is the leakage of information by a person that is self-generated.

2) Defensive corruption is self-defense that compelled a person to pay bribe otherwise his interests would be suffered.

3) Extortive corruption is a compensation in exchange of services.

4) Intensive corruption is undertaking with a future reward in view.

5) Nepotistic corruption means giving preferential treatment to friends or relatives.

6) Supportive corruption is that which protects the existing corruption.

7) Transitive corruption is where the two parties willingly participate in the corrupt practices.

8) Collusive corruption is an instrument of inducement to allure the authorities to do wrong or illegal activity.
9) Coercive corruption is to take undue advantage of the position by the authorities.

10) Non conjunctive corruption is to obtain benefits by the corrupt at the cost of someone where the victim does not come to know of his victimization.

As a matter of fact all these acts and types of corruption and maladministration given by him are not new and hence a matter of routine to a common man. The fact remains that corruption through all these types and limits economic growth, opportunity and investment and brings administrative illness.

From the definitions, approaches, types of corruption as given above, the following characteristics of corruption and maladministration are revealed:

1) Corruption is not single persons deal. It requires more than one person. It is a joint venture.

2) Corruption on the whole involves secrecy, in the sense that it is an act in darkness - except when it becomes rampant deep rooted and manifestation of money power and muscle power.

3) Usually corruption is a nexus between two or more parties having mutual obligation, understanding mutual benefit among the concerned parties.

4) Those who practice corruption usually attempt to camouflage their activities by resorting to some form of justification.

5) Those who are involved in corruption would like to influence decision making.

6) Generally, act of corruption involves deception, of some section of society and betrayal of trust.
There are certainly some causes at the root of corruption. Lot many efforts have been taken place to find out such causes by the scholars, academicians and theologians. The following are a few causes some of which have been pointed out by Alatas Syed Husien:

1) MORAL AND ETHICAL:
   a) Non-following of religious and ethical teaching,
   b) Degeneration and deterioration of values;

2) HISTORICAL:
   a) Colonialism leading to poverty due to extraction of resources by empirical powers,

3) SOCIAL:
   a) Illiteracy and poor standard of education,
   b) Absence of positive socio-economic environment conducive to corrupt-free society,
   c) Lack of urge to come out of mental make-up tolerating corrupt practices.
   d) Social structure and governmental system that is generating and supportive to corruption

3) LEGAL:
   a) Absence of severe punitive measures to curb corruption based upon inequality.

4) ECONOMIC:
   a) Poverty and un-employment,
   b) Over population,
   c) Low level per capita and national income,
5) ADMINISTRATIVE:
   a) delay, red-tapism, officialdom, rigidity, hierarchy, indifferent
      and non-sensible working of administrative system, lack of
      integrity, inefficiency among functionaries, etc.

6) POLITICAL:
   a) The absence or weakness of leadership in key positions capable
      of inspiring and influencing conduct mitigating corruption.
   b) nexus between politicians and bureaucrats.

There are many more causes of corruption. The list is exhaustive and
unending. More and more new causes are added to it. The causes lead
to new modes of corruption besides, number and severity of causes of
corruption. Its magnitude and extent also matter much, which can be
ascertained from their estimates based on comparative analysis of the
ranking of corruption in various countries.

Maladministration is associated with corruption. Maladministration
gives birth to corruption and corruption leads to a rise in
maladministration in government or other. It is commonly discussed
and required to be dealt with. Hence, a number of researches, projects,
committees and commissions in various countries have been
desperately studying how to face and curb the problem. Several books
are dedicated to this issue. The media have offered a large space on
the aspects related to the problem. All opine that it is inborn in the
society and is unending; but needs to be controlled for a healthy
welfare state.
1.9.4.1 CORRUPTION PERCEPTION INDEX

Transparency International (TI) is an International institute which finds out the ranking of corrupt countries in the world. According to it, India ranked 69th in the year 2000 which slipped up to 71st in 2001. The Corruption Perception index ranked 2.8 from 2.7 – which suggests that corruption is getting worst. The ranking is as given below. 88

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<td>Yugoslavia</td>
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<td>91</td>
<td>Nigeria</td>
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The ranking shows that India, a large democratic & most populated country is more corrupt than many underdeveloped and even undeveloped countries also.

From the point of view of our study, it can be observed that as per the ranking, Scandinavian countries are almost non-corrupt where Ombudsman is playing an effective role. It is remarkable to note that on prima-facie, there is co-relation between existence of Ombudsman and high degree of control on corruption.
Of course there are exceptions, as many of the countries with high degree of corruption do not have the institution of Ombudsman. However, it cannot be universally said about this co-relation between Ombudsman and corruption. The Nigerian Ombudsman is effective and yet its ranking is first from below. It means that other factors may be responsible for corruption.

South Asian countries are highly ranked as compared to other countries in the world. Because of deeply ingrained institutions and attitudes carried over from colonial and pre-colonial times, rampant corruption is obvious, to some extent natural also in the South Asian countries. Amongst the South Asian countries, India is at the 10th position. It is very shameful on the part of our country that the undeveloped countries like Taiwan, Thailand, and Philippines are less corrupt than India. Hence, the following section deals with the problem of corruption and faulty administration in Indian scenario.

1.9.5 MALADMINISTRATION AND CORRUPTION IN INDIA

Corruption in India is a dysfunctional outcome of the interaction between the public and the private. This action includes corruption, bribery, nepotism, etc. According to Odegard, corruption in India is a product of the way of life of an acquisitive society where 'money talks,' where what 'works' is justified, and where people are judged by what they have rather than what they are.\(^89\) Corruption is un-ending and mind-boggling in India which is a multi-caste, multi-religious, multi-linguistic state.\(^90\) During pre-independence days, according to drain theory of Dadabhai Naoroji Britishers were responsible for exploitation of India.\(^91\) After Independence, British were replaced by
our own officials and politicians; however the condition of exploitation remained as it was; helpless and voiceless are governed by the arbitrary low and use of force injustice and unrighteousness. Administration is rounded by the malpractises and corruption. Both citizens and administrators are responsible for corruption.

1.9.6 BUREAUCRACY AND CORRUPTION IN INDIA

The phenomenon of corruption cannot be understood without reference to the bureaucracy. Bureaucrats are responsible for mismanagement, frauds and pilferages. Bureaucracy actually fails to perform its duty in an accountable manner. It was so in the past it is so at present.

The Committee on Prevention of corruption observed,

"... in the primitive and medieval societies scope of public authority was small; man of the matters that were looked after by the community have now become a function of the state" ⁹²

This is how the Committee explains widening role of bureaucracy.

In his ‘Indian Panorama: Triumphs And Tragedies’, Mr. S.K. Ghosh indicates that bribery is common for import licenses, building permissions, government employment, agricultural aids, liquor permits, bank employment and loans, admission to educational institutions, etc. In rural areas land records can be manipulated by bribing Amine.⁹³

Many other village officials accept bribe from villagers besides the Amin. The village Sarpanch as often bribed from landlords to decide the cases in their favour. Since most of the villagers are poor, the officials, especially the tribal people for advancing loans and

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marketing their agricultural products, often exploit them. During land settlements the concerned staff operating in villages is heavily bribed to manipulate records.

Corruption exists not only in villages but in urban areas also. Usually, the Income Tax Inspectors are responsible for departmental corruption as the lawyers, doctors, film stars, proprietors of coaching classes, businessmen evade taxes.

The police authorities take bribe for verification of character antecedents report, which is a must before issuing the passports and arms licenses before joining jobs permanently. In an interview to ‘One India, One People’ Francis Ribero, the then Police Commissioner of Mumbai pointed out how the ministers extract money from the police officials to be transferred. The concerned ministers sent a list of persons of their choice for appointments as well as promotions with the considerations of money. Private residences of several Director General and Inspector Generals of Police have been raided by the CBI in different parts of our country and unaccounted wealth was seized by them.⁹⁴

The Indian railway is the largest department in India and is spreaded far and wide and is also known for its corruption. A traveling ticket collector earns thousands of rupees per day in addition to his salary. Daily, thousands of youth and political leaders travel by trains without tickets. As a matter of fact, railway reservation means nothing if one can ‘manage’ the ticket collector. Thefts of items from railway coaches, goods in railway yards and brake-vans in connivance with railway staff and RPF run into crores of rupees.
In the government hospitals, medicines are regularly stolen and sold by hospital staff, nurses and ward-boys. Death reports/postmortem reports are provided with fake causes of death. Stealing and selling of eatables, clothing, medicines by prison staff is habitual. The ward-boys, attendants and ayahs charge heavy amount for visit and just taking a look at the patients. In prisons and hospitals, sub-standard material is supplied because of close links between the contractors and the authorities. Usually, the part of material is found in the houses of superintendents and the officials.

Nationalized banks are also involved in fraud amassing money by illegal means. Smuggling is a big business in India. In Mumbai, the annual profit earned form smuggling is estimated to Rs. 8,000 crores year. Leaders always have a strong link with smugglers. A smuggler provides money and muscle power to leaders during elections and naturally expects protection from them.

‘Pay the price and the job is yours’ is an all-pervasive condition for appointment in government jobs. Every appointment, assignment and transfer carries a price tag. The merit hardly matters. The employment exchanges undertake bribe for registration of names and of course, for recommendation of names to various departments. In State Public Service Commission, corruption and bribery is rampant. Corrupt and communal persons are appointed as the members of the Commission. In some states, members are used as agents to collect money from the candidates. Before some days nearly 398 posts recommended by MPSC involving chairman, senior officers of the commission along with police officers as well as officers from Mantralya were traped for involving in malpractices, bribe and irregularities in those selection.
One can customize a case of injustice with him/her self in the court of law. Unfortunately, our judicial system appears to be blind. To quote Mr. Arvind Bobde, late Advocate General of Maharashtra, "...judiciary is the only institution in the country which has no public accountability. Judges are paid poorly, their status, dignity and independence is not assured."\(^96\)

The impeachment of justice V. Ram Swami, of the Supreme Court the first ever impeachment motion against a Supreme Court Judge, noted by Krishna Ayer,

"...Corruption inside the institution is mounting, even judicial officers are slowly coming into the suspect class."\(^97\)

Judiciary in India is not far from corrupt practices. It is being discussed in the second chapter in detail.

Bureaucracy is not free from corruption not only in India but in any other country. In Nicaragua, 40% of the importers have to pay 'incentives' over and above legal tariffs and fees. In Pakistan nearly all women had to pay for their delivery even though government hospitals and primary health care centers claimed to provide service free of charge. In Uganda, 50% of the people surveyed expressed their opinion that they had to pay bribes while dealing with the judicial services. In Bolivia, 78% of the people paid bribes when regularizing their government documents. In Thailand, there has been corruption in military and many officers are members of the board of private firms doing business with defense ministry.\(^98\) Official corruption in China is the most serious problem.

No bureaucracy is free from corruption and maladministration.
1.9.7 POLITICIANS AND CORRUPTION IN INDIA

There are two opinions about the fact that there is a nexus between the bureaucrats and politicians. Hence, it is necessary to approach and locate corruption on the part of functionaries along with politicians. As a matter of fact, the main source of corruption in India is politics in spite of the fact that politicians must support the process of eradicating corruption. Elections and electoral imperatives faced by political parties constitute the basis of political corruption.

In Indian context, noninterference in administration by politician termed as political neutrality, which is a British tradition of civil service has been almost non existent today. The pressures of party politics are very strong. The pure and dynamic civil servants are disgusted due to black shaded politics. Hippocratic politicians make bureaucracy insincere.

Political process breeds corruption. Political leaders divert development funds for personal benefits and use their authority amiss. Parliament is expected to be a mirror of public will. It is a representation of general morality. It is bonded with good governance. The role of Parliament in fighting corruption is essential. However, it fails to perform this role, may be because of a wrong choice of the representatives. The modus operandi of corruption in the past was to corrupt those in power. However recently people with corrupt background directly enter into arena of politics. As a result, the black marketers have their influence on Indian politics. They join political parties, become office bearers and eventually control the party easily.

Pundit Jawaharlal Nehru, the first Prime Minister of India by ignoring the changes of corruption against Krishna Menon, the then Defense
Minister, in jeep scandal and T.T. Krishnammachari, the then finance Minister, in LIC-Mundra scam sowed the seeds of corruption in Indian politics. In Sino-India conflict, government raided and seized all papers in the bank of China and discovered that Nehru had an undisclosed account of ‘royalty’ for his books in the Soviet Union.\textsuperscript{99} That was shocking for Indians. It is well known that Indra Gandhi used to describe corruption as a worldwide phenomenon. She allowed her son Sanjay Gandhi to sell licenses in market place. Mr. Lal Bahadur Shastri, in his very short tenure tried to curb corruption. He tried to evolve a policy of weeding out political corruption, which Indira Gandhi supported more to spread it out in Indian politics. Morarji Desai’s son was persuaded in his business. Jain’s dairy boldly and unreluctantly prove how Mr. Rajeev Gandhi got 2 crores in bofors scandal. V.P. Singh’s Ministers also were involved with hawala that he was in vain to prevent corruption.

During Chandrashechar’s term, money was made from telephone equipment to State Trading Corporation purchases. Narsimha Rao’s term is a black period of Indian administration. He is the only Prime Minister of India who was sued in the court for the charges of corruption. Greed, forgery were governing virtues in his period. His son Prabhakar was arrested in urea scam. Kuldeep Nair says, “\ldots Indira Gandhi may have corrupted the institutions, but Narsimha Rao institutionalized corruption.”\textsuperscript{100} It was criticised that A.B. Vajpayee was not free from corruption. It is surprising that why Chandraswami and hawala scandals are the blemishes of Indian politics.
In short, political corruption in India is not confined to grass-root level only but also pervaded severely at the top. Thus politics and corruption are inseparable.

Not only in India but also in the developed countries, ministers and politicians are involved in scams and scandals. Corruption reigns supreme even in advanced countries like Japan where every other Prime Minister has had to resign on this charge.¹⁰¹ Potential of politics is lost that weakens the government. The allegations of corruption are playing a more central role in politics in Belgium, Britain, Japan, Italy, Spain and many other countries. In Philippines, a political office is a privileged position. It can be bought and sold. In Morocco, access to political power ensures access to economic privileges. In Africa, political leadership is the primary force behind corruption. In Jakarta, (1967) 17 people were arrested, some of them were from the Indonesian Armed Forces, who organized a syndicate to sell or rent out firearms to those who needed them for private, often criminal purposes. The great Chinese reformer, Wang An Shih (AD 1021 - 86) in his attempt to eliminate corruption was impressed by the two ever-recurrent sources of corruption, bad laws and bad men. As he put it, “... but what I wish particularly now to emphasize is that history proves it to be impossible to secure proper government by merely relying on the power of the law to control officials when the latter are not the right men for their job. It is equally futile to expect efficient government in having the right men in their proper positions, you hedge them by a multitude of minute and harassing probations.”¹⁰²

His view is extremely instructive.
Political corruption is an intentional and deeply affects the government. The confidence of the people in the authorities has been shaken due to deep-rooted corruption. It becomes only way to get the things done in a huge democratic set up of government in India. In such a situation a common man who is at the receiving end is rendered helpless.

Considering the spreading cancer of corruption in our country, there is an urgent need for a trustworthy, independent and impartial machinery with adequate power to end corruption. Certainly, it needs persons of courage to occupy the position of Ombudsman, and of course, there is a political will to appoint such persons of courage. Thus, there is definitely a rationality behind the office of the Lokpal at national and Lokayukta at the state level.

SECTION 3
1.10 GENESIS OF INSTITUTION OF OMBUDSMAN
1.10.1 BIRTH OF OMBUDSMAN
The world has been experiencing the problem of maladministration and corruption. The common man is a victim of political and administrative corruption. The effects of corruption can be seen on the economic and social conditions of any country.

An urgent need for a watchdog over the government is as old as the government itself. Over 2,500 years ago, the ancient Romans established a Tribune to protect the rights of the people from those of ruling them. ‘Censors’ also reviewed programme of officials and took complaints from citizens. The Chinese Dynasty thousands of years ago had a person called the ‘control Yuan’ who handled complaints
about maladministration in government. The French also had their ‘Protector du Citoyen’. Thus, either in monarchy or democracy, each and every system, need a controller for the government. The smallest country like Korea also had such machinery. In 1402, the king created the ‘Shinmungo’ or drum of justice outside the palace. Anyone could report a case of injustice by beating the drum. In 1713, King Charls II, of Sweden was out of the country for 12 years for Russian war. He created a post of ‘Chancellor Of Justice’ to supervise his servants in his absence. After the war, the king returned and the post was replaced by ‘Justitie Kansler’. Only the title was changed besides the appointment by the king, Justitie Kansler got appointing by the representative bodies. In 1809, Sweden adopted its own constitution and parliament boosted the Ombudsman institution by providing the need of control over public servants and governmental decisions. The important reason to establish the institution was to check the Royal officers disregard for law who were king’s men (JK) in the Parliament. Thus, the Justitie Ombudsman in Sweden is derivate in 1809 with an aim to defend citizen. Until now, nearly 150 countries assumed such an institution. Before going the worldwide scheme of Ombudsman, it is necessary to know what does it mean.

1.10.2 WHAT IS OMBUDSMAN?
‘Ombudsman’ is a household word in Sweden; but Indians are unknown to the concept. The word Ombudsman looks as if its constituent would be familiar, judging from the elements of man, Ombudsman is a Swedish word-ombud means ‘commissioner, or
agent’. It is derivate from old Norse ‘Umbodh’ was charge commission. In old Norse, ‘Umbodhsmadhr’ was a deputy who looked after the interests and legal affairs of a group of such a trade union or business. In 1809, the office of Riksdagens (Parliament) created Justitie Ombudsman to look after the interest of Justice in the affairs between the government and citizens. According to Encyclopedic Dictionary,

"...Ombudsman is an officer appointed to provide an extra check on the rights of citizens against action.”  107

But, this is not a broad and all pervasive concept. According to ‘Collier’s Encyclopedia’,

"...Ombudsman is a public official appointed to investigate governmental abuses and who intervenes for the sake of ordinary citizen in his dealings with co-machinery of the government. Ombudsman is a person who helps the government and citizens as well.”  108

21st Century Universal Encyclopedia traces out that Ombudsman is a Scandinavian term for an official appointed to investigate complaints against the action of government departments. Technically, Ombudsman is a person of institutional ability and outstanding integrity with regard to the complaints from the public on decisions, actions or omissions by public administration. Ombudsman can protect the people against corruption and maladministration as well as, abuse of powers and unfair decisions. It should be very clear that Ombudsman is neither an advocate nor a defender of government servant. The word ‘ombud’ refers to a person who acts as a spokesman or the representative of another person. It is an institution,
which can deal properly with the government by a common man. According to Caiden,

".... Ombudsman is institutionalized public conscience - the essence of what the government ought to do; that is to cultivate the well being of the citizens, the preservation of individual liberty and equitable treatment of all citizens by the public bureaucracy. " 109

The meaning of Ombudsman is clearly a ‘Citizens Charter.’

There are different names for Ombudsman in different countries as Defensor Del Pueblo (Spain. Argentina, Colombia); Parliamentary Commissioner For Administration (Sri Lanka, UK); Me Diateur De La Re Publique (France, Gabon, Mauritania, Senegal); Public Protector (South Africa) Protector Du Citoyen (Que Bec); Volksanwaltschaft (Austria) Public Complaints Commissioner (Nigeria); Provedor De Justica (Portugal); Difensor Civico (Italy); Investigator-General (Zambia); Citizen’s Aid (Iowa); Wafaqi Mohtasib (Pakistan).

Though, the names are different the major purpose of adopting the machinery everywhere is to protect the citizens interests from corrupt bureaucracy. So far organizational level of the machinery is concerned, some countries have Ombudsman offices at the national level only; some have Ombusman at the regional, state and national level. Australia, Argentina, Spain have Ombudsman at national level; Canada, India, Italy have at the sub-national or state level; whereas European countries, North America, Latin America, Africa have a combination of Ombudsman functionaries at the regional level, city level and also at the public – private level. The international
Ombudsman Institution on Nov. 15, 1999 resolved that the name ‘Ombudsman’ be used only when the office is created by enactment of the legislative or quasi legislative body which, is empowered to protect citizens against maladministration, violation of rights, unfairness, errors, abuse of power or any injustice caused and to investigate their complaints.110 ‘Ombudsman’ is a word which the developed countries apply in the private sector also. In the present study, five models of Ombudsman are taken which are prevalent in less corrupt countries according to Transparency International.

1.10.3. OMBUDSMAN IN SWEDEN

Parenting from Sweden, Ombudsman has constitutional status. Article(6) of Swedish constitution states,

“...Ombudsman is supervising under instruction determined by the Risksdag.” 111

Sweden has given birth to the concept. It is at the third position of Transparency International’s Corruption Perception Index. Sweden has four Ombudsmen. (1) The Parliamentary Ombudsman whom Swedish call as ‘Watchdog of Parliament,’ who assumed his role long back in 1809. (2) Justitie Ombudsman (3) Milititie Ombudsman the post and work of both Ombudsmen has divided in 1915. (4) The office of Deputy Ombudsman was introduced in 1914.

SELECTION – Sweden being a true democratic country where Ombudsman is elected and removed by the Parliament. He has a term of 4 years. What is remarkable about the institute in Sweden is that though , it is elected by the Parliament, it is not responsible to the Cabinet. Thus, it is immune for the political pressure.
AREA OF WORK – The public servants/officials, Parliament members, military, personnel, Judges are under Ombudsman’s jurisdiction. This shows a wide scope and jurisdiction for him. Justitie Ombudsman introduced a change wherein a person should not be arrested unless the charges against him/her are based on evidence. It is surprising that the concept of Military Ombudsman was opposed because there was a doubt that discipline would be harmed by offering a soldier the opportunity to complain against his superior. But, nowadays, one agrees that the office of Ombudsman only should confirm to procedural rule designed to protect rights of the individuals. It fulfills the object of providing an independent and impartial military performance in Sweden.

The Swedish constitution keeps away Ministers from Ombudsman’s jurisdiction to secure Ombudsman’s political neutrality. Sweden was in an urgent need of a protector of citizens from abuse of power which was fulfilled.

Considering the volume of work the Deputy Ombudsman was established to share his work. Accordingly Chief Ombudsman handles the major cases and the minor cases are handled by the Deputy Ombudsman. Deputy Ombudsman is not at all answerable to the Chief Ombudsman, he is directly selected and answerable to the Parliament. Thus it is his subsidiary position. But it is surprising that he is not empowered to overturn every error and to produce correct answers to all the difficult questions which modern government confronts.

Swedish Ombudsman is a world classic institution which is independent, impartial and economically viable in terms of seeking
help on corrupt practices. Hence, it has inspired confidence in public that the protector of people's rights at their back. The unique feature of Ombudsman system is its decisions and documents are always open to the public which is a sign of public orientation of the institution. Ombudsman is reviewed by his results in every case. In 1969, the private Ombudsman for the press was established. In 1971, Consumer Ombudsman was appointed for the protection of the consumers. The word 'Ombudsman' has been used in the private sectors also, his decisions and results are publicly open; but the documents are not.

1.10.4 OMBUDSMAN IN DENMARK
After the birth of Ombudsman in Sweden, it remained unnoticed for hundred and more countries. According to 'Parliamentary Commissioner Act, 1954', The Ombudsmand (in Danish language) institution was introduced in Denmark. Stephen Hurwitz, the first Ombudsman of Denmark was elected on 29 March and assumed his office on April 1, 1954. It is surprising that in Denmark also the civil servants and other organizations were in opposition of forming the institution. However, after some years of its formation, the Presidents of major organizations expressed their opinion in favor of Ombudsman,

"...In the beginning, we were suspicious. As a matter of fact, we were scared. But we have found that we were mistaken." The Ombudsman's work actually proved like a tonic for the Danish public administration.
SELECTION – Parliamentary Commissioner/Ombudsman a non-Parliamentary authority is elected by the Folketing (Parliament) for a term of 4 years. He can obviously be dismissed by the Folketing only. The salary and the position of Ombudsman is the same as that of the Supreme Court Judges.

AREA OF POWER – The state administration, civil, police, military and since 1962, the municipal authorities are also considered under Ombudsman’s jurisdiction. He has been specifically given jurisdiction over discretionary areas of the administrative decisions; but he can’t change the administrative structure and further the administration. Thus considerable thought was given on the jurisdiction of the Ombudsman. Every care has also been taken to limit his authority. As usual it is recommendatory and mandatory authority. It is not obligatory on the part of Government to follow the recommendations of the Ombudsman. However, according to article(3),

"... he is obliged to keep himself informed as to whether any person subject to his jurisdiction pursues unlawful ends, takes arbitrary or unreasonable decisions or otherwise commits mistakes or acts, of negligence in the discharge of his/her duties." 118

Danish Ombudsman can also supervise the Ministers, civil servants and all other persons acting in the services of the state. If Ombudsman’s decision should be found something objectionable in any case which suspects his impartiality, he may inform Parliamentary Directives about the case and Parliamentary Directives only take a decision on such cases.
There are no administrative tribunals in Denmark so that Danish Ombudsman directly can question to the Minister’s action. He can discuss policy matters of the government and can suggest reforms in the defective provision of the law.¹¹⁹ Danish Ombudsman is a teacher of society and binds as a doctor up to cure the disease of corruption without disturbing its efficiency.

The office of Denmark Ombudsman proved it’s utility not only in the country, but also in other countries. Stephen Hurwitz – a man with magic eye provided a good model to the willing incumbents.¹²⁰ He visited the European countries. By writing articles, delivering speeches and conversing the authorities, he pushed up to form the institution; and these efforts made several countries to establish Ombudsman system.

1.10.5 OMBUDSMAN IN NEWZEALAND

After second world war, the institution of Ombudsman attracted the western Asian, European and non-Scandinavian countries. New Zealand is the fourth in the world and first Anglo-Saxon country which adopted the Swedish idea of Ombudsman. The New Zealand government agreed that the means available to the citizens for administrative injuries were inadequate. Stephen Hurwitz, the first Danish Ombudsman read a paper on ‘The Scandinavian Ombudsman’ in the United Nations seminar held at Cyclone in 1959.¹²¹ R.B. Cooke, a lawyer in New Zealand was influenced by Hurwitz’s ideas of a redressal. He presented a paper at the New Zealand Legal Conference in 1960 stressing the need to create an institution. The lawyers, public servants and ministers opposed him. Yet the National Party in its

In 1962, New Zealand adopted Ombudsman by Law. The jurisdiction under this act was limited. The Ombudsman could investigate the complaints from citizens about the central government departments and organizations.

SELECTION – The New Zealand Ombudsman is appointed by the Parliament for 5 years. He may be re-appointed. Sir Guy Powel, the former Foreign Commissioner of India, was elected as the first Ombudsman of New Zealand.

AREA OF POWER – As per the Act of 1962, central government departments and organizations had been under Ombudsman’s jurisdiction, which was extended in 1968 by including education and hospital boards. The local government authorities were included according to Ombudsman Act, 1975. The ministers were out of his purview. The New Zealand government was not assured of its success of the Ombudsman due to ‘Official Information Act, 1982’. Ombudsman conveyed the role of investigating and reviewing decisions on the requests of access to official information, held by the ministers of the Crown. After 20 years of its inception, Ombudsman could have the jurisdiction to consider the cases against ministers. In Jan. 2001, the ‘Protector Disclosures Act, 2000’ or ‘Whistle blowing’ legislation came into force. The act added Ombudsman to provide advice to an employee who has made or is considering making a protected disclosure. Though, the powers of New Zealand
Ombudsman are extended time-to-time, yet he cannot consider the cases from those who have acted as legal advisers to the crown. As well as he cannot investigate an administrative act. Ombudsman can investigate military affairs; but municipal administration is not under his jurisdiction. Those were lacunas and contradictions in the working of Ombudsman. The Ombudsman avoids such cases under his jurisdiction which are unduly delayed, or which are trivial frivolous in nature or lacking in faith. It is essential for an Ombudsman to be independent of the government so that the people of New Zealand can have confidence in the impartiality of investigations into Government departments and organization. A notable thing of New Zealand Ombudsman is that he equally protects both the citizen and the public servants. As the government of New Zealand supports the Ombudsman, it finds decreasing number of cases. As a result New Zealand could attain third position in 'Transparency International's ranking. New Zealand Ombudsman is treated as a model Ombudsman by other countries.

1.10.5 OMBUDSMAN IN NORWAY

Ranking sixth in Transparency International’s Index, this smallest Scandinavian country has successfully adopted the Ombudsman institute. In Norway, there was a head of the district in king’s administration who was similar to Ombudsman. After the Second World War, Norway needed a machinery for administrative development. By the Storting’s (Parliament in Norway) resolution the Ombudsman was created for objectors on Nov. 23, 1956. The Storting’s Ombudsman for public administration came into force
according to the Act of June 1962 and Andreas Schie was crowned the first Storting Ombudsman. In the Bill, Mr. Jens Haugland, Minister of Justice stressed that the Ombudsman should protect the interests of the individual from administration. For this purpose, Ombudsman is formed in Norway.

SELECTION – Like other countries, Norwegian Ombudsman is elected by Storting for a term of 4 years and can be discharged by a two thirds of majority.

AREA OF POWER – The Defense Ombudsman looks after the matters of defense. It is effective for military and civilian service. The Storting’s Ombudsman for public administration tries to assess and call the attention to the defects in administration. He does not have any executive power. The Ombudsman in Norway can deal with complaints against municipal, administration, judiciary and cases involving deprivation of personal liberty. Storting itself is out of his jurisdiction. He has freedom to choose his method of work. It is his own decision whether the documents should be put up publicly or not.

The Norwegian Ombudsman makes the Public Administration to follow up its laws and regulations. Though Norwegian Ombudsman has a very limited power, yet it proves effective and sometimes, harmful to high handedness arrogance of the officials in their work.

The main drawback of Norwegian Ombudsman is that his powers are limited to express his opinion on the cases. The Act says that the complaints must be signed and must be submitted within a year from the vented date. There is the ‘Ombudsman Board’ led by Ombudsman and members to deal with economical and social rights, educational and welfare work, canteen services, pensions, clothing, food,
accommodation, NGOs, armed forces. The board has the extensive powers. But the Norwegian Ombudsman basically has a limited power. According to observers, he is successful in tackling corruption and maladministration.

1.10.6 OMBUDSMAN IN FINLAND

Finland is the least corrupt country in the world. This small and thinly populated country gives a lesson for need of a bold and fair initiative of citizen’s guardian. It makes the idea of Ombudsman popular in the democratic world.

Finland was separated from Sweden in 1809 and was attached to the Russian empire. To prevent public officials’ interference in citizens rights, there was a need of super-administrative authority. Finland created such authority as ‘Procurement’ on the background of Sweden’s ‘Chancellor of Justice’. Constitutionally, in 1919, Finland adopted the office of Ombudsman.

SELECTION – Ombudsman, chosen by the Parliament, can enjoy his term for 4 years. He is irremovable in his term and after completing his term, he may be rejected or may not be continued. His salary is equal to that of the President of Supreme Court, but his jurisdiction and status is quiet different.

AREA OF POWER – According to section 49 of Finnish constitution, the President of the republic, ministers, public authorities, civil servants are within the jurisdiction of Ombudsman. He can also deal with legal cases and complaints against judges, military, corporate bodies and enterprises.
He cannot oversee the Parliament, the procurator, foreign authorities, corporations and non-profit associations. He can assist the business sessions of the Council of State, tribunals and public departments. He has some judicial authorities also under which he can request the court to reopen the cases.

In Finland, Ombudsman is an independent body that acts upon his/her own judgment. Ombudsman can investigate a matter of concern on his/her initiative. Finnish Ombudsman conducts site inspections of public officials and institutions focusing particularly on prisons, military units and institutions in the social welfare and health sector. The Ombudsman makes sure that the laws are upheld generally in the officials capacity. The procedure of inquiry is very flexible The views of Ombudsman and results are often released and are open to public.

Procurator/Chancellor of Justice is the similar important post to Ombudsman in Finland. The single difference is that procurator can review the decisions of the Disciplinary Committee of the Finnish Bar Association which Ombudsman cannot. Ombudsman is the highest guardian of the law. The Finnish legal experts stress that their influence has been beneficial. He is more powerful than his counterparts in the other Scandinavian countries. He himself is an example of usefulness and effectiveness.

Netherlands initiated with the Ombudsman on Jan 1, 1982.

1.10.7 OMBUDSMAN EXPERIENCE IN OTHER COUNTRIES

In sixties, after adopting the Ombudsman institute by New Zealand many other non-Scandinavian countries also followed its experience. It is matter of surprise that the people, civil servants or ministers in
these countries were not in favour initially. But, some components in the society felt the institute of Ombudsman useful after the very creation of the institution. Certainly, the main purpose of forming the institute is to investigate complaints of maladministration in these countries.

Stephen Hurwitz, ex-Ombudsman, Denmark and Guy Powels, ex-Ombudsman of New Zealand through their speeches and articles tried to convince the importance of the institution in the modern welfare state. And the European countries sprang up with the office of Ombudsman in Public and Private sectors. United Kingdom was one of them which was inspired by Hurwitz's speeches on Ombudsman. As per 'The Parliamentary Commission Act, 1967' Sir Edmund Compton was appointed as the first Ombudsman of the UK. The Police and Criminal Evidence Act, 1984 established a Prison Ombudsman

Ombudsman in the UK proved quite useful even though its' major drawback was indirect approach to him by the citizens. His existence was defended by the Select Committee of the House of Commons. His powers in obtaining evidence are equivalent to the High Court. Ombudsman can deal with the cases of housing, planning, education, social services, consumer protection, drainage and council tax. There are 3 Local Government Ombudsmen who investigate the complaints of injustice.

Israel was the first developing country, which introduced the office of Ombudsman. Israeli Ombudsman influences public policy. In fact, it was powerless and failure attempt in the begining. Dr. Izak Nebenza, a former Ombudsman says,
"...God gave man the task for moral advancement not only in his individual soul but also in his society. This is a meaningful role assigned by us (Ombudsman)..." 136

If an Ombudsman is a quality man, he can make it strong. There are dozens of Ombudsmen in Israel in public and private sectors. Nigerian people think that Ombudsman is not an instrument to fight corruption; but it is a useful redressal of citizens’ grievances against the public and private bureaucracy.137 Nigeria established Military Ombudsman in 1975 and executive and civil Ombudsman in 1979. It is surprising that besides impartial and independent practice of Nigerian Ombudsman, it is the most corrupt country in TI’s list. Who is to be blamed? It can be argued that Ombudsman is an external device to curb corruption. It can’t change the entire corruption prone culture that may be prevailing in Nigeria.

Manitoba, a province in America, established Ombudsman institution by ‘Ombudsman Act, 1970’ by appointing Mr. George W. Maltby as the first Ombudsman of the state. Since 1997, the jurisdiction of the Ombudsman was expanded to municipalities and in June 1990, the Regional Ombudsman ship was established.138 The purpose was to promote fairness, equity and administrative accountability. Detroit city in the US has a City Ombudsman who provides investigative and informational service to the citizens regarding the city government.139 City Ombudsman has discretionary power that he can build up the confidence of citizens.

Like Manitoba and Detroit, in the US, Yukon territorial government has an independent Ombudsman. Yukon Ombudsman can investigate the complaints against government departments, public schools,
colleges, hospitals, local authorities, crown corporations and governing bodies.\textsuperscript{140} A major task of Ombudsman is to review administrative actions in Yukon.

The office of Ombudsman was established on Jan. 20, 1995 in Bosnia-Herzegovina. The purpose is to protect rights and fundamental freedoms of each individual against governmental errors.\textsuperscript{141}

Greek Ombudsman began to function on 1 Oct. 1998 and gained a widespread identification in 4 years. Greek Ombudsman aims at resolving individual problems and shaping administrative culture.\textsuperscript{142}

In Sept. 1999, the earthquake complied Athens by sending 12 staff members for processing citizen’s applications to the Government Natural Disaster Financial Assistance programme. Greek Ombudsman proved its’ social awareness. Greek Ombudsman joined IOI, a promoter of worldwide Ombudsmanship in 1999. P. Nikiforos, the first Ombudsman in Greek submitted a proposal to the council of Europe with a demand to train personnel of newly founded Ombudsman.\textsuperscript{143} The proposal was accepted and training was offered to them in 2000. Greek Ombudsman in a very short period proved its’ utility. It can deal with the matter of civil services, local government, judicial services, international services, legal council of state, secret services. It’s powers of dealing are quite large, which made it very popular amongst Greek citizens.

Netherland’s ‘National Syndicate’ during 1801 to 1805 was similar to Ombudsman. The office of ‘Investigator Commissioner’ appeared in 1976 and he replaced the office of Ombudsman in 1982.\textsuperscript{144} It was constitutionalized on March 25, 1999 by article 78(a). The Ombudsman in Netherlands is one of the appreciated models which
took 9th position in the ‘Corruption Perception Index’ launched by the Transparency International. Netherland’s Public awareness for the institute made it popular within a meantime. It properly determines whether the administrative authorities are acting properly in the matters under investigation.

Article (276) of Pakistan’s Interim constitution in 1972 provided Federal and Provincial Ombudsman. It was included in the 4th Schedule of constitution and the office of Ombudsman became effective in 1983. Ombudsman (Wafaqi Mohtasib) works non-politically to diagnose, investigate, redress and rectify maladministration. Court, defense, army, navy, air force, foreign affairs are excluded from Ombudsman’s jurisdiction. In reality, Pakistani Ombudsman cannot work effectively as expected for the simple reason that vital areas of corrupt society are as stated above far away from the jurisdiction of Ombudsman. Again lack of political support will make the institution blunt. The provincial Government of Azad Jammu-Kashmir has established Provincial Ombudsman. Mohtasib not only deals with cases but also initiates studies and research regarding maladministration.

1.10.8 OMBUDSMAN IN PUBLIC AND PRIVATE SECTOR
Besides politicians and bureaucrats those usually constitute the apparatus of power and authority and instruments of political influence and blow. Therefore, the institution of Ombudsman is required to check and control them. However, the Ombudsman mechanism has also penetrated different sectors of socio economic set up of different countries. They include banking, police, education,
children, mining Legal, criminal, dental, pension, prison, electrical, etc.

**BANKING OMBUDSMAN**

Banking Ombudsman scheme was adopted for the first time by the UK on 2 Jan, 1986. The purpose was of course to resolve individual complaints about banking services. All the major banks are under its jurisdiction. After the UK, many countries are adopting the Ombudsman in private and government banks. India is one of those countries. (detailed study is in Ch.II)

Banking Ombudsman can deal with the complaints from individuals, sole trader partnership and unincorporated bodies. In some countries, a complainant is required to approach the bank authorities but the concern authorities do not respond to the complaints then he or she could approach the Bank Ombudsman. Ombudsman directly cannot deal with bank’s commercial judgement, yet it can interfere in maladministration or unfair treatment in the decision. It cannot make a rule for banking industry or cannot advise on any financial matter or debit problems. The Banking Ombudsman in private sector is proved to be an impartial, independent and very useful body.

**POLICE OMBUDSMAN**

The smooth source in the UK to prevent the maladministration in police is Police Ombudsman, which presently is occupied by Mrs. Nuala O’Loan. There are three departments in the UK police Ombudsman’s office- The first is the ‘Investigator Directorate’ which deals with the complaints lodged by citizen. The Ombudsman has access to all the documents related to the case. The second is the
‘Corporate Service Directorate’ that collects the information and statistics. It also creates the method of processing and prepares policy of the office. The third is the 'Research And Policy Directorate' which is responsible to provide the detailed information and legal advice to the Police Ombudsman and the whole staff. Due to the check of police Ombudsman, the police conduct code is exercised as well as maladministration and misuses of the post by officers and constables are under control in the UK. Some other countries are also trying to go with Police Ombudsman to tackle administrative defects in the police Department.

EDUCATIONAL OMBUDSMAN
Approximately, 200 colleges, schools, universities and educational institutes have Ombudsman ship in the US and the UK. According to American concept, University Ombudsman is urgent for justice within the complex institutional system of higher education. Universities at Kansas, Texas, Chicago, Colorado, Florida have established University Ombudsman. By posting Edward Levi as the first student Ombudsman in 1968, Chicago University introduced the concept of Education Ombudsman. The office of Chicago Ombudsman is run by the students to investigate grievances by students as well as suggests a need for changes in the university rules, procedures, policies. In Kansas university, Ombudsman institution is created according to ‘University Senate Rules And Regulations Act’ which can communicate with students, staff, faculty, administrators and service offices impartially, independently and confidentially. Colorado Ombudsman has authority to explain university policies and
procedures which other universities do not allow. Ombudsman in Florida can give advice, guidance, interpretation and investigation as needed by the students, the staff, and can discuss with them openly academic cases, employment problems, housing issues, testing procedures. The powers vested with Ombudsman in the different universities are different. Chicago public schools have established Ombudsman to respond to individuals request. The office aims to offer a good service to students and parents. The state of Hawaii’s Board Of Education Ombudsman is committed to assure that proper attention is given to individual complaints as concerns. The Board has a good communication with the students through Ombudsman’s results and the same has a control over the educational society. Consequently, Education Ombudsman has created a healthy environment in the educational field in the US.

CHILDREN OMBUDSMAN
Presently, UN is convinced of the problem of child labor, hunger, death due to starvation. The rights of children are in need of a safeguard. Sweden formed Children Ombudsman. It is an independent body. The institute is working at the national and local level. The problems of children under 18 are dealt with by the Children Ombudsman. The Ombudsman also takes care of children’s rights and laws. In Sweden, Children Ombudsman is a good remedy for their problems.

MINING OMBUDSMAN
Mineral rich countries like Australia have several problems in mining industry. Oxfam Community Aid Board has been working for the last
40 years on problems of this industry. It formally established Mining Ombudsman in Feb. 2000. It has effected the industries in Asia, the Pacific, Africa and Latin America. Accordingly, the Mining Ombudsman can deal with the person who looses his land without proper compensation and sustainable livelihood; degradation of waterways and other natural resources upon which people depend.\textsuperscript{155} The Mining Ombudsman assists communities in developing countries also.

LEGAL OMBUDSMAN

In April 1991, Great Britain formed a Legal Service Ombudsman Institution which has the jurisdiction over the behavior of lawyers. In the US and the UK there is a Legislative Ombudsman whereas Kansas Government Department of Corrections has Departmental Ombudsman. Michigan Department of Corrections established Ombudsman in 1975- Both Kansas and Michigan Corrections Ombudsmen could deal with the prisons, legislators, correction’s employee. It can review or recommend policy, mediate resolution and update the changes made by the department. The Scottish Legal Service Ombudsman Mrs. Linda Baker thinks that it is her duty to handle the complaints against a legal practitioner.\textsuperscript{156} The prisoners can complain against their practitioners in the past or at present.

CRIME VICTIM'S OMBUDSMAN

Crime Victims Ombudsman at South Carolina is neither an advocate nor a defender of bureaucracy. It provides a crime victim equitable and fair treatment. It refers for them an appropriate agency and
reviews and attempts to resolve complaints against victim assistance programme.\textsuperscript{157} Texas Department of Criminal Justice established the programme to assist in the communication between the department and public. Ombudsman responds to the queries and makes appropriate referrals to agency staff.

**DENTAL OMBUDSMAN**
The Dental Ombudsman service was launched in South Africa at first. The aim was to provide consumers an access to an independent, autonomous person. This person was expected to advice the patients, to deal with complaints concerning the standards of services and fees of the dentists.\textsuperscript{158} The utility of Dental Ombudsman depend on the relationship between the practitioner and the patients.

**PENSION OMBUDSMAN**
The secretary of State, in the UK, appoints pension Ombudsman whereas his role and powers are decided by Parliament. The Ombudsman can deal with the cases of pension schemes. David Leverick, the pension Ombudsman expressed his views that he can decide the complaints and disputes about the ways the pensions scheme are run.\textsuperscript{159} The Ombudsman can deal with the cases like delay in pension.

**PRISON OMBUDSMAN**
By the recommendations on the prisoners in England and Wales, the prison Ombudsman was appointed in Oct. 1994. The intention was to investigate the grievances made by prisoners about their poor
treatment by prison staff. Sir Peter Wood, the first Prison Ombudsman in England had stated in his first annual report (23 Oct. 1996) that he dealt with 2000 complaints during 14 months in which most of the recommendations were rejected by prison services.¹⁶⁰ He identified that some particular areas of prison services functioning of which give rise to complaints including disciplinary adjudication, security categorization, property and transfers. Now, after 10 years of aging of prison Ombudsman it is observed that maximum recommendations are accepted and implemented. Since Nov. 29, 2001 the Prison and Probation Ombudsman office had been launched. The Ex-prisoners, prisoners on remand and people on rehabilitation can go to the Ombudsman. The sufferers by National Probation Service can also write to this Ombudsman.

ELECTRICITY OMBUDSMAN

Electricity Industry in South Africa grounded Ombudsman for Electricity by appointing Nick Hakof on Nov. 30, 2000. The office determines the prompt resolution and complaints and disputes between the consumers of electricity services and the members.¹⁶¹ It also provides a free, accessible and informal service to the customers of electricity services accomplishing the Ombudsman scheme in private sector. Unfortunately it is found that the main role of Ombudsman is diverted in private sector.

As a matter of fact, there has been debate on public and Private Ombudsman machineries. There is no need of it for private sector. Accordingly, Ombudsman is essential defender against governmental actions. The role of private Ombudsman, if at all any, is something
different. It may be that of mediator between public and private administration.

This is a brief account of Ombudsman system in different countries dealing with various sectors of the countries.

To some extent Government ombudsmen are successfully preventing malpractice in administration and corruption in government. It becomes citizen's listener, friend and however, the private Ombudsman has yet to establish its utility as compared to its counterpart in Government.

1.11 INTERNATIONAL OMBUDSMAN INSTITUTE

Though Swedish Ombudsman was un-noticed for hundred and more years after it's creation the idea and concept of Ombudsman has gripped strongly after the Second World War. Nearly 187 countries have Ombudsman office. Some ombudsmen thought to come together under one roof and to give and take some ideas with the purpose experiences related to the Ombudsman institute. On this background, the International Ombudsman Institute was established in 1978. The ombudsmen in developed and developing countries have reached a stage to gather and to pass some ideas of Ombudsman ship mainly to control a worldwide disease of corruption and maladministration. IOI promotes and encourages the concept of Ombudsman throughout the world. It is instrumental in the exchange of information and experience between ombudsmen, throughout the world. To achieve this purpose, IOI supports the researches and studies of Ombudsman system. It accords scholarships, fellowships and grants to the researchers and encourages the idea of Ombudsman.
IOI has proceedings in English, Spanish and French languages. Till date, IOI has 126 members from 86 countries throughout the world. Updated Website developed by IOI indicates the member of on May 12, 2002.

Among the members of IOI from which the Board of Director is formed. Secretariat is a responsible body for IOI’s policy. IOI has members Institutional, Associate, Individual, Honorary Life and Library Members. After every 4 years it organizes conferences. The first conference was held at Edmond, Canada in 1978; Jerusalem, Isreal in 1980; Vienna, Austria in 1992; Durban, South Africa in 2000; Buenos Aires, Argentina in 1996. The sixth conference affirmed the essential characteristic of Ombudsman institute as independence and credibility.\(^{163}\)

The conferences and occasional workshops always focus on the promotion of the Ombudsman institute. At present, IOI is trying its efficiency, decentralization and democratization of it’s regional branches. IOI has a publication of yearly reports, journals, occasional paper series, news teller, etc. It maintains a library and resource of monographs, articles, legislation and other research material related to Ombudsman in any country. Increasingly, IOI helps to develop Ombudsman institution for the protection of human rights to strengthen its efficiency.

1.12 EUROPEAN OMBUDSMAN INSTITUTE

In addition to International Ombudsman Institute there are similar bodies in other part of the world. For example, in Oct. 1982, the ‘Working Association’ for the Insurance at University of Innsbruck
organized a conference in Innsbruck, which was dedicated to more scientific interest and to the ideas of Ombudsman. The proponents were Prof. Hans Klecatoky, Prof. Dr. Fritz Riechert Facilides, Prof. Norbert Wirner who inspired to associate 'European Ombudsman Academy'. This was not a legal organization. In 1988, it was transformed legally by naming 'European Ombudsman Institute'. This view of Ombudsman system world over reminds us of what Bryce says eternal vigilance is the price of democracy. The western countries provide a model where in there is concern for corruption free society on the one hand and need for attention towards grievances of citizens on other. It also makes us very clear that malady of corruption and maladministration is not confined to government sector alone but has perporated to almost all walks of life Again the results of Ombudsman machinery is it same at all Maces. There are variations. The Scandinavian countries are more successful than others. May be due to their small size and comparative less complicated systems and relations. Lastly the underdeveloped countries have lot of things to learn from the experience of the western this regard. The EIO is housed at Innsbruck, Tyrol. It is associated with the Australian law. The EIO adopted a scientific view to analyze human rights; to give civil protection to the institution of Ombudsman. EIO conducts the research projects in the Ombudsman ship area to promote and disseminate in non-Ombudsman countries. EIO mainly is active in supporting the Ombudsman idea and to give publicity. Besides IOI and EIO there are several associations of Ombudsman which are affected in these particular areas such as Ombudsman
Association, USA; British and Irish Ombudsman Association; Australia and Pacific Ombudsman Association; Canadian Ombudsman Association, etc.

1.13 WHY OMBUDSMAN IS POPULAR?

Swedish Ombudsman after 140 years, received a world-wide recognition. Maximum developed and developing countries are going with Ombudsman office. Concluding in all these countries the concept becomes popular. The reasons of popularity could be:

1) Ombudsman is an impartial and independent machinery.
2) Ombudsman are easier to approach.
3) Ombudsman can operate openly.
4) Ombudsman can handle the minor cases.
5) There is not any age limit to go to the Ombudsman.
6) Ombudsman provides service without charging heavy fees.
7) Ombudsman is non-profit, non-political institute.
8) Ombudsman’s method of handling appeals against administrative decisions is direct, informal and more speedy than the courts.
9) Ombudsman is public-oriented more then government- orientation.
10) Ombudsman can inspire the confidence and trust within all parties.
11) Ombudsman can deal through enter premises, oral information or media news if not complained by anyone.

For all these reasons Ombudsman institution is popular. It helps to correct negligent, defective, irregular, abusive, injurious and insufficient behavior that constantly affects the personal and corrective rights of individuals.
1.14 DOES OMBUDSMAN EXCESSIVE?

Of course, to create an interest in public affairs, and to further and promote those principles, which are believed to be important to the public welfare, the Ombudsman system is necessary.

A people’s movement should be initiated to end the ‘misdeeds’ of the government. A common man should feel that there is someone who lovingly attends to him in an impartial, supportive and active manner. Ombudsman is supposed to resolve problems informally expeditiously of each and every citizen. Ombudsman is the only machinery, which investigates the citizen’s relation with government authority.

One of the Swedish Ombudsman says,

"...150 years experience proves that there is always a need for an agency independent of the administration for a safeguarding the rights of the citizens. The Ombudsman institution, which was formed 150 years ago, still appears to be a useful and necessary instrument for the protection of the citizen’s lawful interests in the rapid development of society. New conditions naturally demand continuing adjustment." 167

1.15 CONCLUSION

Modern government is going at the crossroad of good governance. It needs effective, efficient, transparent and accountable administration. It demands faith in administration on the side of people. The Ombudsman is a flexible friend of people, which is capable to fight with rising challenges of government. In this chapter, a wide discussion has been made on its usefulness, independence and accesses. Ombudsman shows its integrity and utility to citizens around
the world. Ombudsman, a citizen’s defender is successfully running in the public and private field in the western countries. But, some countries like India do not have such a device. International Ombudsman Institute and European Ombudsman Institute are hopefully trying to expand the idea of Ombudsman in those countries, which are not having it. They are in hope of developing the institution with the changing times as the greatest challenge of public administration.
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