CENTRE FOR ADVANCED STRATEGIC STUDIES

PROCEEDINGS OF SEMINAR
ON
OMBUDSMEN, LOKAYUKTAS, LOKPALS; CONCEPT AND WORKING WITH SPECIAL REFERENCE TO STATE OF MAHARASHTRA

25th March, 2004

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Chairman : Dr. Madhav Godbole
Main Speaker : Justice (Retd.) V.P. Tipnis

Air Marshal (Retd.) S. Kulkarni, Director of the Centre for Advanced Strategic Studies (CASS) welcomed the participants and Justice V.P. Tipnis (Former Lokayukta, State of Maharashtra), the main speaker at the Seminar and introduced him to the participants.

Dr Madhav Godbole, President of the Centre after felicitating Justice V.P. Tipnis requested him to make his presentation on "Ombudsmen, Lokayuktas, Lokpals ; Concept and Working, with Special Reference to State of Maharashtra". He further said that Justice Tipnis has kindly consented to interact with the participants at the Seminar, after his presentation.

PAPER PRESENTED BY JUSTICE V. P. TIPNIS

I am thankful to the Members of the Governing Council of Centre for Advanced Strategic Studies for giving me the opportunity to share my thoughts with you on "Ombudsmen, Lokayuktas, Lokpals ; Concept and Working, with Special Reference to State of Maharashtra".

Ombudsman is an independent person to whom individual citizen can appeal if she or he has a complaint against the maladministration. The first Ombudsman was appointed in Sweden in 1810 with a job of supervising public administration and investigating public complaints about wrong doings by officials. The Ombudsman reported to Parliament and not to the

Monarch. The first Ombudsman remained the sole one for well over 100 years. Finland appointed an Ombudsman in 1920 and Denmark in 1955. Sweden and Norway also appointed Ombudsmen for the armed forces. New Zeland appointed Ombudsman in 1962. From early 1960 the Ombudsman concept spread rapidly and by 1991, 48 National Ombudsmen had been appointed throughout the world with many more Ombudsmen operating at regional and local levels. Today, in almost all the countries Ombudsmen have been appointed.

In United Kingdom the Parliamentary Commissioner Act, 1967 established the first British Ombudsman. His official title is the Parliamentary Commissioner for Administration. The public cannot complain directly to the Parliamentary Ombudsman and the case must be referred by a Member of the Parliament acting on behalf of the constituent. The Ombudsman is an official of the House of Commons and submits an Annual Report of his work to the House. In 1969 Ombudsman was appointed for Northern Ireland. Four years later the first Health Service Commissioner was appointed. In 1974 Local Government Ombudsmen, known officially as Commissioner for Local Administration, were appointed for England and Wales and in 1975 for Scotland. In the 1980s the Broadcasting Standards Authority, the Police Complaints Authority and the Independent Commission for Police Complaints for Northern Ireland were established.

Maladministration is the key concept in understanding the work of Ombudsman. An Ombudsman investigates the way in which a particular administrative decision was taken and whether the individual concerned was treated unjustly as a result. If Ombudsman decides that injustice did occur, he recommends remedies. With a Government Department or Organisation concerned, the Ombudsman tries to ensure that the maladministration cannot happen again, by recommending ways of improving or changing defective procedures. Maladministration is difficult to define. It usually results from neglect, delay, incompetence or failure to observe the established procedures. Other examples include unwillingness to treat the complainant as a person with rights, refusal to answer reasonable question, knowingly giving inadequate or misleading advice,

showing bias because of colour or sex or on any other grounds and partiality. The maladministration is not the same as illegality, the decision can be within the law and yet result in injustice. It is important to remember that the Ombudsmen are concerned only with the way a particular policy has been implemented, not with its merits. They do not investigate whether the particular Government policy is right or wrong, fair or sensible, or has a good or bad result. The Ombudsman's job is to investigate the complaints about possible inequity in administration and whenever possible to achieve redress for the complainant. The emphasis placed on maladministration is not meant to play down the significance of Ombudsman's work. Maladministration or even an administrative error can have a devastating effect on an individual.

Hallmark characteristics of the classical Ombudsman are independence, unimpeded access to information, power to investigate and opportunity to report to Legislature. Ombudsmen are independent of other institutions of the State and the Government and cannot be controlled by them. The Ombudsmen have extensive powers to send for persons and papers. These enable them to investigate as widely and as deeply as a particular case requires. They can see all the relevant files and interview any official. Basically, the Ombudsman operate in the public sector i.e. the broad field of Government and administration. During 1980s the Ombudsmen spread to private, commercial sector and a number of Ombudsmen schemes were established. There are Banking Ombudsmen, Ombudsmen for building societies, insurance, investment, pension etc. Access to an internal complaints system forms an important element in the rights of citizens and consumers. Internal systems often succeed in resolving cases to the satisfaction of everyone involved. However, external Ombudsman will continue to be needed to provide impartial and independent investigation and adjudication of complaints. The existence of an Ombudsman encourages organizations to operate fair and speedy internal complaints procedures and provides a last resort to deal with the complaint that cannot be resolved internally.

The Ombudsman idea has been gaining currency following

publication of the Whyatt Report (1961), and M.C. Setalvad's inaugural speech in the third All India Lawyers Conference (1962). In addition, public administrators and jurists have been highlighting the importance and impressing upon the government the desirability of adopting this institution. In the year 1959, there was an animated discussion in Parliament on this issue. C.D. Deshmukh, the then Chairman, University Grants Commission, made a formal proposal on July 11, 1959 in his lecture at Madras. K.M. Munshi in a debate suggested (February 1962) that such an institution take the form of a Permanent Tribunal of Enquiry. L.M. Singhvi raised this issue in Parliament while P.B. Gajendragadkar, the then Chief Justice of the Supreme Court of India (July 1963), lent his support to the Ombudsman concept. Pandit Jawaharlal Nehru, the then Prime Minister (November 1963), had also said that the idea of an Ombudsman 'fascinated' him.

The Administrative Reforms Commission (ARC) (1966) was requested to consider, inter alia, the problem of redress of citizens' grievances, keeping in mind the need for ensuring the highest standards of efficiency and integrity in the public services, and also for making public administration responsive and responsible to the people. The ARC was expected to examine the following :

1. the adequacy of existing arrangements for the redress of grievances ; and

2. the need for the introduction of any new machinery or special institution for the redress of grievances.

On 20.10.1966, interim report of the Administrative Reforms Commission on "Problems of Redress of Citizens' Grievances" was submitted. The report contained recommendations for setting up two institutions to be designated Lokpal and Lokayukta. The Lokpal should look into the complaints against administrative acts of the Ministers, Secretaries to the Government at the Centre and in the States. The Lokayukta, one to be appointed in each State and one at the Centre, will look at the complaints against administrative acts of other authorities. The Commission

observed that in earlier times a Democratic Government was mainly concerned with fiscal or revenue administration and the maintenance of law and order but with the expansion of the scope of the functions of the Government and with the increasing impact of Government policies on administration, the need as well as the difficulty of securing popular contentment through administration has become accentuated. In recent years, the progressive regulation of the citizen's life through the acts and policies of Government and through institutions set up to implement them has made very substantial encroachment into the spheres of individual liberty and consequently the citizen is much more affected now than in the past by the activities of the administration. The citizen can approach the courts to enforce fundamental rights and also seek other remedies against illegal action of Government or officers or authorities subordinate to them. The doctrine of ministerial responsibility to Parliament has been one of the most frequently used weapons by Parliament to keep the administration under control and to achieve the desired standard of probity, propriety and efficiency in administration. Parliament through its committee or petitions, has provided another forum for the citizens to secure redress against an act of injustice but this procedure is available only in a limited category and number of cases. On the whole, parliamentary procedure is more suited for the consideration of matters of public importance than for obtaining redress of individual grievances arising in the course of day to day governmental administration. In discharging the constitutional functions of holding the scales of justice even between the State and the citizen the courts have intervened to set right administrative actions on the grounds of illegality or failure to follow prescribed procedures of rules of natural justice. However, justice through Courts under the modern system of judiciary is generally both expensive and dilatory, whereas an individual wishes to seek quick and cheap justice. The administrative orders which affect the individual are firstly those that are passed in the exercise of statutory responsibilities and are subject to appeal or revision or redress in a Court of Law or before Administrative Tribunals or before Higher Departmental Authorities. In some cases they are final at the stage at which the relevant statute makes it so. In the last case there is virtually no statutory remedy open to a citizen against the final order.

Secondly, there are administrative orders which are passed in the exercise of discretion in the field of the executive authority by Government or authorities subordinate to it. Such orders may be open to question either on the ground of misuse or abuse of power or on the ground of having been influenced by ulterior motives or extraneous considerations or as a result of error of judgment, negligence, inefficiency or even perversity. These are generally the matters in which the forum available to the citizen is the superior authority in the official hierarchy. The limited remedies open to the citizen and expensive and dilatory procedure available to him were sparingly resorted to so long as the activities of the State were themselves confined or restricted. The citizens submitted with some demur or without much protest to the slow working of democratic institutions, procedures and practices or to the long drawn out legal processes because he was either not keenly aware of the extent of the shortcomings of the administration or he remained by and large unaffected by many of its administrative acts and policies. However, since the first world war and more so since independence, the sphere of Governmental activities has been expanding so that today the State undertakes many and varied activities for, and in the interest of, the welfare of the community as a whole. In the past the citizen was affected by the activities of a comparatively small number of State functionaries and in respect of only a small sector of his daily life. Today he is exposed at numerous points to the impact of the multifarious activities of the administration ranging over a vast field, e.g. the operation of controls relating to the various commodities which he needs, the provision of many services intended for general benefit and welfare, the operation of the contractual relations between himself and the Government in various spheres and the regulation of property rights and of the various social services such as labour, banking, insurance and provident funds. In all these spheres, the machinery of the latter in the pursuit of his daily avocations, they provide sensitive spots out of which spring many causes of public discontent and dissatisfaction.

Judgements of judicial or quasi-judicial authorities such as administrative tribunals, are not open to challenge except before authorities competent to deal with them in appellate or revisional

jurisdiction. The sanctity of judicial process would preclude such decision from being reviewed in any other way. The sanctity, which is fundamental to democracy and essential for the rule of law, has to be preserved at all costs. The conflict with judicial process on the part of any other authority set up for the redress of grievances has, therefore, to be eschewed. Judicial decisions must prevail even if they leave a feeling of grievance among those adversely affected. This would apply to matters which are decided by administrative tribunals of a judicial or quasi-judicial nature. However, there is a vast area of cases arising out of exercise of executive powers which may involve injustice to individuals and for which no remedy is available. The Commission, therefore, felt that the main issue was how to provide the citizen with an institution to which he can have easy access for the redress of his grievances and which he is unable to seek elsewhere. The fact that the individual has a reasonable opportunity of presenting his case before an authority which is in a different hierarchy from the authority which passes the order and which is independent and impartial, would in itself be a source of satisfaction to the citizen concerned even where the result of investigation is unfavourable to him. Where the citizen can establish the genuineness of is case, it is plainly the duty of the State to set right the wrong done to him. The need for giving this approach a concrete form arises from the fact that parliamentary supervision by itself cannot fully ensure to the citizen that rectitude over the entire area covered by administrative discretion. Nor have the various administrative tires and hierarchies proved adequate for the purpose. The tendency to uphold the man on the spot, a casual approach to one's own responsibilities, an assumption of unquestionable superiority of the administration, a feeling of the sanctity of authority and neglect or indifference on the part of a superior authority may prevent a citizen from obtaining justice even at the final stage of the administrative system. It is in such circumstances that an institution for redress of grievances must be provided within the democratic system of Government. It has to be an institution in which the average citizen will have faith and confidence and through which he will be able to secure quick and inexpensive justice. The Commission studied how other countries have solved these problems. They studied the system of Ombudsman prevalent in Scandinavian countries. The

Commission observed that in all the countries the Ombudsman is virtually a parliamentary institution though he is not and cannot be a Member of the Parliament. He is independent of the judiciary, the executive and the legislature. Even military departments are within his jurisdiction in some countries. His position is analogous to that of the highest or high judicial functionaries in the country. He is left comparatively free to choose his own methods of investigation. The investigations are of informal character. The Commission felt that such an institution is the need of the time in our country.

After having carefully evaluated the pros and cons, the Commission was of the view that there should be one authority dealing with complaints against the administrative acts of Ministers or Secretaries to Government at the Centre and in the State and there should be another authority in each State and at the Centre for dealing with the complaints of administrative acts of other officials. The Commission also stated that setting up of these authorities should not however be taken to be a complete answer to the problem of redress of citizens' grievances. They only provide the ultimate set up for such redress as has not been available through the normal departmental or governmental machinery and do not absolve the department from fulfilling its obligations to the citizen for administering its affairs without generating as far as possible any legitimate sense of grievance. Thus, the administration itself must play the major role in reducing the area of grievances and providing remedies wherever necessary and feasible. For the purpose, there should be established in each Ministry or Department, as the case may be, suitable machinery for the receipt and investigation of complaints and for setting in motion where necessary the administrative process for providing remedies.

The Commission also considered the prevalence of corruption in the administration and thought that such institution should deal with such cases as well. The Commission recommended that the main features of the Institution of Lokpal and Lokayukta should be :-

(a) they should be demonstrably independent and impartial;

(b) their investigations and proceedings should be conducted in private and should be informal in character;

(c) their appointment should as far as possible be non-political;

(d) their status should compare with the highest judicial functionaries in the country;

(e) they should deal with the matter in the discretionary field involving acts of injustice, corruption or favouritism;

(f) their proceedings should not be subject to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties and

(g) they should not look forward to any benefit or pecuniary advantage from the executive Government.

The Commission also suggested the draft of the Lokpal Bill.

So far, the institution of Lokpal at the national level is the victim of dissolutions, defeat and deferment. The first bill titled "Lokpal and Lokayuktas Bill, 1968" was introduced in May 1968 which was referred to the Joint Select Committee of both the Houses of Parliament. The Joint Select Committee submitted report in March 1969. In August 1969 the Bill was passed by the Lok Sabha but it lapsed due to the dissolution of the House in July 1970. A Bill with certain modifications was again introduced in August 1971 but this too lapsed. Another Lokpal Bill was introduced in the Lok Sabha by the Janata Government in July 1977 which was referred to the Joint Select Committee and it too

lapsed due to dissolution of the House. The Congress Government in August 1985 introduced another Bill, which was once again referred to the Joint Select Committee. However, the Government itself withdrew the Bill without advancing convincing reasons. The National Front Government in 1989 once again introduced the Lokpal Bill, which also lapsed due to defeat of the Government on the floor of the Lok Sabha. The Lokpal Bill 1996 also met with the same fate. Thereafter there is talk of Lokpal Bill. Even promises were given publicly but it is yet to see the light of the day. The apathy and insensitivity of political parties have delayed establishment of Lokpal insitution.

As against this, the states have done much better. Today, the Office of the Lokayukta and Upa-Lokayukta exists in the States of Orissa, Maharashtra, Bihar, Rajasthan, Uttar Pradesh, Madhya Pradesh, Andhra Pradesh, Himachal Pradesh, Karnataka, Assam, Gujarat, Kerala, Punjab and Delhi. In some states the institution is known as Lokpal. There are variations in compositions, process of appointment, jurisdiction, tenure, method of removal and organization support system.

In the year 2001, during the Sixth All India Conference of Lokayuktas and Upa-Lokayuktas, a working committee was appointed and after deliberations the working committee drafted the Model Lokayukta Bill with a request to all the State Governments to consider the passing of the Act so that there would be uniformity. Unfortunately, no State has considered the request. As such, there are several different provisions regarding the tenure, jurisdiction and powers of different Lokayuktas in different States.

The State of Maharashtra was almost a pioneer State by enacting the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 and the Institution came into being on 25.10.1972.

The Lokayukta is appointed by the Governor after consultation with the Chief Justice of the High Court and Leader of the Opposition in the Legislative Assembly. The Upa-Lokayukta is appointed by the Governor in consultation with the

Lokayukta. In Maharashtra as per the practice in vogue, a retired Chief Justice or Judge of the High Court is appointed as Lokayukta and a retired I.A.S. Officer of the rank of the Chief Secretary or Additional Chief Secretary to the State Government is appointed as Upa-Lokayukta. The functions, powers and jurisdiction of the Lokayukta and Upa-Lokayukta are laid down in the Act.

The jurisdiction of Lokayukta extends to the entire state of Maharashtra. Lokayukta has powers to inquire and investigate a complaint involving a grievance or an allegation made in respect of any action which is taken by or with the general or specific approval of public servants such as :-

(i) a member of the Council of Ministers (except the Chief Minister), for the state of Maharashtra, i.e. a Minister, Minister of State and Deputy Minister ;

(ii) every President and Vice-President of Zilla Parishad, Chairman and Deputy Chairman of Panchayat Samiti, and Chairman of the Standing or any Subjects Committee; constituted under the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961.

(iii) every President and Vice-President of Municipal Council, Chairman of the Standing or any Subjects Committee ; constituted or deemed to be constituted under the Maharashtra Municipalities Act, 1965.

The jurisdiction of the Upa-Lokayukta extends to the entire State and he may investigate complaints involving a grievance or an allegation made in respect of any action taken by or with the general or specific approval of any public servant other than those who are specifically entrusted with the Lokayukta. However, the Lokayukta may also investigate any action which may be investigated by the Upa-Lokayukta.

As per Section 2(g) of the Act, "maladministration" means action taken or purporting to have been taken in exercise of

administrative functions in any case :-

(a) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or

(b) where there has been negligence or undue delay in taking such action, or the administrative procedure or practice governing such action involves undue delay.

As per section 2 (b) of the Act, "allegation", in relation to a public servants, means any affirmation that such public servant :-

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm, or hardship to any other person,

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives, or

(iii) is guilty of corruption, or lack of integrity in his capacity as such public servant.

Section 2(d) of the Act defines "grievance" as under :-

"grievance means a claim by a person that he sustained injustice or undue hardship in consequence of maladministration".

As per the Maharashtra Lokayukta and Upa-lokayuktas Act, 1971 "public servant" denotes a person falling under any of the descriptions namely :-

(i) A member of the Council of Ministers (other than the Chief Minister), for the Stateof Maharashtra that is to say a Minister, Minister of State and Deputy Minister ;

(ii) A person appointed to a public service or post in

connection with the affairs of the State of Maharashtra;

(iii) (a) President and Vice President of Zilla Parishad, Chairman and Deputy Chairman of Panchayat Samiti, and Chairman of the Standing or any Subjects Committee;

(b) President and Vice President of Municipal Council, Chairman of the Standing or any Subjects Committee;

(iv) Every person in the service or pay of :-

(a) any local authority in the State of Maharashtra which is notified by the State Government in this behalf in the Official Gazette ;

(b) any corporation (not being local authority) established by or under a State or Provincial Act and owned or controlled by the State Government;

(c) any Government company within the meaning of Section 617 of the Companies Act, 1956 in which not less than fifty-one percent of the paid up share capital is held by the State Government, or any company which is a subsidiary of a company in which not less than fifty-one percent of the paid up share capital is held by the State Government;

(d) any society registered under the Societies Registration Act, 1860 which is subject to the control of the State Government and which is notified by that Government in this behalf in the Official Gazette.

The Lokayukta and Upa-Lokayukta do not have powers to investigate or enquire into a complaint involving a grievance in respect of :-

(a) action taken for the purpose of investigating crime or protecting the security of the State;

(b) action taken in the exercise of powers in relation to determining whether a matter shall go to a Court or not;

(c) action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers except where the complainant alleges harassment or gross delay in meeting contractual obligations;

(d) action taken in respect of appointments, removal, pay, discipline, superannuation or other matters relating to conditions of service or public servants but not including action relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service;

(e) grant of honours and awards;

(f) if the complainant has or had any remedy by way of proceedings before any tribunal or court of law.

Provided that, the Lokayukta or an Upa-Lokayukta may conduct an investigation notwithstanding that the complainant had or has such a remedy if the Lokayukta or, as the case may be, the Upa-Lokayukta is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.

The Lokayukta or an Upa-Lokayukta cannot conduct any investigation in the case of a complaint involving a grievance in respect of any action taken by or with the approval of:-

(i) any Judge as defined in section 19 of the Indian Panal Code;

(ii) any officer or servant of any court in India;

(iii) the Accountant General, Maharashtra;

(iv) the Chairman or a member of the Maharashtra State Public Service Commission;

(v) the Chief Election Commissioner, the Election Commissioners and the Regional Commissioners referred to in article 324 of the Constitution and the Chief Electoral Officer, Maharashtra State;

(vi) the Speaker of the Maharashtra Legislative Assembly or the Chairman of the Maharashtra Legislative Council;

(vii) any member of the Secretarial staff of either House of the Legislature.

As per Section 10(2) of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 every investigation is required to be conducted in private and in particular, the identity of the complainant and of the public servant affected by the investigation cannot be disclosed to the public or the press whether before, during or after the investigation.

Provided that the Lokayukta or the Upa-Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he for reasons to be recorded in writing, thinks fit to do so.

Save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or as the case may be the Upa-Lokayukta considers appropriate in the circumstances of the case.

Under Section 10(4) of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 the Lokayukta and Upa-Lokayuktas Act, 1971 the Lokayukta and Upa-Lokayukta may in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation if in his opinion :-

(a) the complaint is frivolous or vexatious, or is not made in good faith ; or

(b) there are no sufficient grounds for investigating or as the case may be for continuing the investigation; or

(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.

In any case where the Lokayukta or Upa-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of complaint, he shall record his reasons therefore and communicate the same to the complainant and the public servant concerned.

The conductof an investigation under this Act in respect of any action shall not affect such action or any power or duty of any public servant to take further action with respect to any matter subject to the investigation.

No suit, prosecution, or other legal proceeding shall lie against the Lokayukta or the Upa-Lokayukta or against any officer, employee, agency or person referred to in Section 13 in respect of anything which is in good faith done or intended to be done under this Act.

No proceedings of the Lokayukta or Upa-Lokayukta shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokayukta or Upa-Lokayukta shall be liable to be challenged, reviewed, quashed or called in question in court.

Every complaint under the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 shall be made as far as possible in the prescribed form in Schedule 'A' of Rule 13 of the Maharashtra Lokayukta and Upa-Lokayuktas Rules, 1974 and shall contain the following particulars :-

the name and address of the complainant;

the name, official designation and address of the person against whom the complaint involving grievance or allegation is made;

if a complaint involving a grievance is made after the expiry of twelve months from the date of action complained against, the date on which the said action complained against became known to the complainant and statement of grounds showing sufficient cause for not making the complaint within the period specified i.e. within 12 months.

In the said complaint the complainant should submit details/nature of complaint along with the requisite copies of the documents.

Every complaint shall be duly signed by the complainant or if he is illiterate, it shall bear his thumb impression duly attested by a literate person under his signature and such person shall give his name and address below his signature. Every complaint shall be accompanied by as many spare copies as there are public servants complained against. Every complaint shall be supported by an affidavit. Every affidavit shall be drawn up clearly and legibly and as far as possible in a language which the person making it understands. It shall be drawn in the first person. Every person making an affidavit shall state his name, father's or husband's name as the case may be, surname, age, profession or trade and place of residence. The affidavit shall be sworn in before the Registrar or the Assistant Registrar of the Lokayukta and Upa-Lokayukta or before a person legally authorized to administer oath.

The institution of Lokayukta provides cheap and informal remedy free from technical intricacies. It is grievance redressal process can be activated by the aggrieved person just by mailing his complaint on a plain piece of paper. His complaint is examined with care and subjected to thorough investigation. Whether the impugned act of omission or commission is unreasonable, unjust

or arbitrary is determined with objectivity. Whether the decision making process has been fair and whether all the relevant facts were taken into consideration is examined.

Constant effort is made to ensure that technicalities do not hamper investigation into the complaints. No complaint is turned down on account of mere technicality, or for want of proper form. Most of the complainants belong to the poorer sections of the society. Every effort is made to assist them in presenting the complaints properly.

Every complaint received is read carefully and the relevant issues are brought out. Further, where the name and the identity of the complainant appears to be doubtful, confirmation of the contentsof the complaint is sought by writing to him at the address given by him.

After meticulous examination of the complaints, a decision is taken for entertaining or rejecting them. In all cases in which the complaints have been rejected, the complainants are informed giving reasons for not entertaining their complaints.

The complaints entertained for inquiry or investigation are referred for reports to the public servants complained against or the competent authorities depending upon the nature of the complaint. In many complaints, the grievance of the complainant is redressed by correspondence without embarking upon regular investigation. If the reports received are not satisfactory, the matters are kept for hearing and an attempt is made to narrow down the difference between the complainant and the administration. If it is found that the administration is not responsive to the grievance of the complainant or if there is prima facie substance in the allegation of corruption, investigation is carried out under Section 10 of the Maharashtra Lokayukta and Upa-Lokayuktas Act, 1971 by issuing a notice to the concerned public servant with a copy thereof to the Competent Authority. If after investigation, maladministration is found or the allegation of corruption is substantiated, findings and recommendations are communicated to the Competent Authority under Section 12(1) or

Section 12(3). The Competent Authority to whom a report is sent under Section 12(1) or 1293) has to take necessary action, for redressing the complainant's grievance and/or also to take disciplinary action against the delinquent public servant and to submit a compliance report to the Lokayukta or Upa-Lokayukta within the time specified in Section 12(2) or Section 12(4).

If the Lokayukta or the Upa-Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-section (1) and (3), he closes the case under information to the complainant, the public servant and the Competent Authority concerned. But where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant concerned. On receipt of such special report, the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature.

If it is found during the enquiry that injustice has been caused to the complainant recommendation is made to remove the injustice. Similarly, if the administrative procedure or practice is found to be unreasonable, recommendation is made to remedy the same. If the allegation is substantiated, disciplinary action is recommended against the concerned public servant.

The subject matter of several complaints received by the Lokayukta and Upa-Lokayukta fall outside their jurisdiction as per the provisions in the Maharashtra Lokayukta and Upa-Lokayukta Act, 1971. Similarly, some of the complaints are vague or not specific. Some of the complaints are mere illegible Xerox copies of the correspondence made to other authorities. It is not therefore, possible to take cognizance of such complaints.

There is a misconceived impression among the complainants that on filing the complaint in the office of the Lokayukta and Upa-Lokayukta, the Lokayukta and Upa-Lokayukta can pass binding orders or give decisions like Courts. Hence office continues to receive complaints regarding appointments to particular posts,

employment, compensation, promotion, cancellation of transfer or departmental enquiry etc., It is necessary to make the people aware of the fact that the Lokayukta or Upa-Lokayukta cannot give binding orders like Courts. All efforts are made to redress the grievance of the complainant. But in case the attempts are not successful and after investigation, the Lokayukta or Upa-Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant, recommendations are made to remedy or redress the grievance as specified earlier. Similarly, it is not always possible to give quick relief to the complainant as it is necessary to follow the prescribed procedure laid down in the Act. Each year, nearly about 11 to 12 thousand complaints are received from all over Maharashtra. It is but natural that careful examination of each complaint would take some time before taking further action.

The complainants in their attempt to pursue their complaints are often in the habit of making correspondence repeating the contents of their complaint or once the complaint is registered to raise several other issues. The complainants need to avoid such correspondence to save the time of the employees of this office. It is not only impossible but also unnecessary to enter into repeated correspondence with the complainant regarding the progress made in the enquiry into his complaint. If the complainants avoid such unnecessary correspondence, it will help to finalise the complaints more quickly.

The institution has been successful in redressing the grievance of several complainants. In the last few years, out of the complaints taken up for enquiry, the grievances have been redressed in about 70% of the cases.

To make the Institution of Lokayukta and Upa-Lokayukta more effective, firstly it is necessary that the Institution is visible and easily accessible and secondly, it should be perceived to be strong and effective by the general public.

The relief to the complainant should be available within a reasonable time and in just and proper cases the complainant

should get relief as a matter of course. Ministers, Secretaries and higher officers of the Government should be more accountable and subject to investigation by the Institution and the Lokayukta should be in a position to concentrate more on the above functionaries and such other functionaries as lie within his exclusive jurisdiction under the Act.

One of the reasons of the lack of effectiveness of this institution is the absence of an Independent Investigating Agency under the exclusive control of the Lokayukta. Although the provision of Section 13 enables the Lokayukta and Upa-Lokayukta to utilise the services of any officer or investigating agency of the State of Central Government or any other person of agency, the said provision does not make the institution very effective as the Lokayukta does not have direct control over such an agency of the Government. In fact, the absence of such an independent investigating agency may be the main reason as to why public is not very enthusiastic about filing complaints of corruption against the ministers or secretaries or other highly placed public servants within the exclusive jurisdiction of the Lokayukta mentioned in the Act. The demand for an Independent Investigating Agency under the exclusive control of the Lokayukta has been made persistently by several Lokayuktas in the past, but without any success. Independent Investigating Agency under the exclusive control of Lokayukta is absolutely necessary to make this institution more effective.

Inadequate staff is another reason for delay in disposal of the cases. It is to be appreciated that taking into consideration the very purpose of this institution it is essential that adequate staff has to be provided. Under the provisions of Sections 13 of the Act the Lokayukta may appoint or authorize an Upa-Lokayukta or any officer subordinate to the Lokayukta or Upa-Lokayukta to appoint, officers and other employees to assist the Lokayukta and the Upa-Lokayukta in the discharge of their functions under this Act. The categories of officers and employees, their salaries, allowances and other conditions of services and the administrative powers of the Lokayukta and Upa-Lokayukta shall be such as may be prescribed, after consultation with the Lokayukta. However, despite efforts from this office, sanction for

more staff has not been cleared by the Government hampering the working of this institution tremendously.

The law provides for the appointment of one or more Upa-Lokayuktas. It is also necessary to provide for two more posts of Upa-Lokayukta, over and above the one post already existing to make for better distribution of work between the Lokayukta and Upa-Lokayukta, to facilitate speedy disposal, and also to enable the Lokayukta to concentrate more on cases falling within his exclusive jurisdiction which would no doubt, increase substantially once the independent agency referred to above is placed at his disposal.

The response from the Government and its officers including the Secretaries to the letters from the office of the Lokayukta and Upa-Lokayukta is extremely unsatisfactory; and that is one of the major reasons for the delay in the resolution of even very routine and ordinary complaints. Mere issue of circulars to the effect that queries from the office of the Lokayukta or Upa-Lokayukta should be treated on par with questions raised before the legislature has proved ineffective. In fact the negligence in responding quickly and appropriately to the communications from this office has resulted in some recommendations for appropriate disciplinary action against the officers concerned. However, there has not been a satisfactory response even to such recommendations from the Competent Authorities. In this behalf, it requires to be noticed that even when a formal recommendation under Section 12(1) of the Act is made, in many cases, there is absolutely no response within the time prescribed and even if there is a response, in many cases, the reasons for not accepting the recommendation are the very reasons which were pleaded before the Lokayukta or Upa-Lokayukta and which were negatived by the Lokayukta or Upa-Lokayukta in the earlier report under Section 12(1) of the Act. There are cases where there is no timely response to recommendations under Section 12(1) but the grievance is redressed after a report under Section 12(5).

Undoubtedly, the Lokayukta and Upa-Lokayukta have powers of recommendation which are in law not binding on the

Government. However, that is mostly so all over the world where such institutions are functioning. Once an independent and impartial person after hearing the concerned parties makes a recommendation, normally the Government ought to accept it. It requires to be emphasized that in fact the very purpose of establishment of this institution is to remove genuine discontent amongst the people and to promote a sense of satisfaction with a recognition of the merits of the action taken in pursuance of the state policies. In fact, this institution is contributing to the role of the legislature in making the executive accountable to itself. That is why the Special Reports and Annual Reports are required to be placed before the legislature. Therefore, the normal rule should be the acceptance of the recommendations by the Lokayukta and Upa-Lokayukta. The Special Reports and Annual Reports should be placed before the Legislative Assembly and Legislative Council at the earliest and ideally the same should be discussed by the legislature. The ultimate sanction of this institution is the possibility of the members of the legislature looking into the matter and holding the Government accountable. A suitable mechanism should be evolved at the Government level to ensure timely discussion of both individual Special Reports as also the Annual Report in the legislature and the law also needs to be amended to provide for time limit in this respect.

Inadequate budgetary provision is another impediment in making this institution effective. Although, it was brought to the notice of the Government that appropriate budgetary provision in consultation with the Lokayukta should be made and the matter was discussed with the concerned Secretaries, cuts are routinely effected as with any other Government Departments hampering the working of this institution. Two steps are necessary. Firstly, the budget for the institution must be prepared in consultation with the Lokayukta and secondly, the expenditure must be charged on the Consolidated Fund of the State. There has to be financial autonomy like that accorded to the National Human Rights Commission an also adequate budgetary provision. Presently, the expenditure incurred on the institution of Lokayukta and Upa-Lokayukta is not charged on the Consolidated Fund of the State and even through the Act gives full powers to the Lokayukta to appoint officers and employees to

assist the Lokayukta and Upa-Lokayukta in the discharges of their functioning, sanction of the State Government for the posts is necessary and as a result the authority exists more on paper. It is also necessary to empower the Lokayukta to be able to exercise full powers to incur expenditure from this Fund subject to budgetary provisions. The present tendency to apply a series of budgetary cuts, as in the case of other Government departments, creates difficulties in the working of the institution and the tendency has become particularly manifest of late.

It is also necessary to consider and adopt the Model Lokayukta Bill prepared by the All India Lokayuktas' and Upa-Lokayuktas', Conference and recommended to all the State Government. The Model Lokayukta Bill contains several provisions which will go a long way in making this institution more effective.

All over the world the working of the Ombudsman is given wide publicity. The cases decided by the Ombudsman when published serve a dual purpose. It makes the citizens aware of their rights and it also makes several Departments of the Government aware of the correct position in similar matters thus avoiding the same kind of maladministration elsewhere. No doubt, under the Act the proceedings before the Lokayukta and Upa-Lokayukta are kept confidential. However, the provisions of the Act also enable the Lokayukta in his discretion to make available, from time to time, the substance of cases closed or otherwise disposed of by him or by an Upa-Lokayukta which may appear to him to be of general public, academic or professional interest, in such a manner and to such persons as he may deem appropriate. However, for such publication, adequate funds are necessary. Either the Government itself should take the responsibility of publishing the Annual and Special Reports of the Lokayukta and Upa-Lokayukta as also the decided cases as may be recommended by the Lokayukta , or sufficient funds should be made available to this office for doing the needful.

Complaints and grievances in a majority of the cases should be satisfactorily resolved within the administration itself in the

first instance. For this to occur, not only must the administration itself function smoothly and effectively but an adequate internal complaint redressal machinery has to be established. In the absence of a satisfactory internal complaint redressal machinery, this institution is labouring under the enormous weight of a large number of complaints many of which could easily have been disposed of at the lower levels of administration and do not need attention at the level of Lokayukta and Upa-Lokayukta. A large number of retired officers come with the various types of complaints regarding non-release of terminal benefits either on account of pending enquiries against them or simply because Government grants for he purpose have not been received. The Government of India has a system of "Lok Adalats". Ministers like the Railways use the institution of "Lok Adalats" to look into the complaints on such issues on previously notified dates. It is therefore, necessary to institutionalize the system of "Lok Adalats" particularly for pension and terminal benefits related complaints of retired Government servants and to appoint a designated officer at the level of Divisional Commissioner to look into all complaints of the public in general so that such complaints can be vetted first at that level before being taken up by the Lokayukta / Upa-Lokayukta for consideration.

It is heartening to note that Dr. Madhav Godbole Committee on Good Governance has recommended that the Lokayukta Act should be amended to provide for the following :-

- Entrusting Lokayukta with the overall responsibility of overseeing the vigilance work under the State and putting the Director General, Anti-corruption, under his charge.

- Placing a special investigation team of police officers at the disposal of the Lokayukta, as in Karnataka and Madhya Pradesh.

- Empowering the Lokayukta to release his reports to the general public as soon as they are presented to the

Government.

- Giving financial autonomy to the Lokayukta and to made the expenditure of the office of the Lokayukta "charged" item.

- Treating the recommendation of the Lokayukta to sanction prosecution as mandatory.

- Deleting the provision of the Act to keeping the name of the complainant and the officer complained against as confidential. Instead, it be provided that every enquiry by Lokayukta shall be public, unless, for reasons recorded in writing, the Lokayukta decides to hold it in camera.

- Continuing the enquiries even after the person complained against has demitted office.

- Bringing the State Electricity Board and the State Road Transport Corporation within the purview of Lokayukta, and

- Giving effect to the other recommendations contained in the Model Bill prepared by the Conference of Lokayuktas.

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During the general discussion interacting with the participants, Justice Tipnis cited a number of cases handled by him as the Lokayukta without mentioning the names of the ministers and persons involved and stated the following :-

The Lokayukta in the State of Maharashtra receives approximately 10,000 cases in a year, out of which nearly 3000 admissible cases relate to the core areas. In respect of

about 2500 cases handled by the Lokayukta the complainants or the people have got relief. This should be publicized to encourage larger number of people to seek redress through the institution of the Lokayukta. A grievance submitted on a post card by the post master regarding the blocking of the road for the public by an academic institution controlled by a minister on the grounds of "security of the institution" was taken note of by the Lokayukta and the grievance was redressed and the road was opened for public use under his instructions. In another case, the Lokayukta investigated the grievance and recommended the removal of the Minister involved. A lady Professor from Pune after 33 years of service was denied pension because she had inbetween been to Japan for one year, that too with the approval of the University authorities. Lokayukta's intervention resulted in her getting her legitimate pension. A case against a Minister for encroachment on land given to an educational institution resulted in restoration of the land. He said that maximum complaints were received in his office from Pune which showed that the people in Pune were alert. He said that the institution of Lokayukta provides cheap, prompt and informal remedy free from technical intricacies. He stated that the annual report of the Lokayukta needs to be presented in the Legislative Assemblies and discussed, but during last 30 years the report has not been discussed even once. There is no political will, and therefore it needs to be pressurized by the public, by the citizens. He further stated that to make the institution of the Lokayukta effective in remedying the grievances of the public the following needs to be done.

(a) The Model Bill prepared by the Conference of Lokayuktas should be enacted.

(b) Provision of adequate funds to the office of the Lokayukta and the expenditure to be treated as "charged" item, and giving financial autonomy to the Lokayukta.

(c) Lokayukta should be given investigating machinery under its exclusive control.

(d) Treating the recommendation of the Lokayukta to sanction prosecution as mandatory.

(e) The State Electricity Board and the State Road Transport Corporation should be brought within the purview of the Lokayukta.

(f) Maladministration done as a public servant should be made actionable even after the person demits that office.

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CHAIRMAN'S CLOSING REMARKS

Dr. Madhav Godbole stated that he had occasions to interact with Justice V.P. Tipnis as the Lokayukta. It is only after Justice Tipnis took over as the Lokayukta, the institution of the Lokayukta really became visible. He thanked Justice V.P. Tipnis for his excellent presentation and declared the seminar closed.

BIO-DATA OF JUSTICE V. P. TIPNIS

Born on 17th October, 1937 at Igatpuri, Dist. Nasik, Maharashtra. Passed S.S.C in 1955. Had High School education in M. H. High School, Thane, and College education in the St. Xavier's College, Bombay, and Ram Narayan Ruia College, Matunga, Bombay, and obtained B.A. (Hons.) Degree in Economics from Bombay University in 1959. Obtained M.A. Degree from Bombay University in 1961 in Politics (Department of Politics, University of Bombay). Obtained L.L.B. Degree in 1962 and L.L.M. Degree in 1964 from Bombay University. Also passed Hindi Bhasharatna of Bambai Hindi Vidyapeeth.

Throughout his school and college career, acted in Dramas and also participated in elocution competitions, debates, and eassy competitions in English, Hindi and Marathi and bagged many prizes.

Enrolled on the Roll of the Bar Council of Maharashtra in the year 1962. Continuously practiced in the Bombay High Court for 25 years. Was Assistant Government Pleader, High Court, Appellate Side (Civil & Criminal) as also Assistant Government Pleader (Writ Petition) in the office of the Additional Government Pleader. Was also on the Panel of Senior Counsel for the Union of India. Was Editor of the Indian Law Reports (Bombay Series) for 4 years. Also worked as Part-time Professor of Law for sometime in the New Law College at Bombay and the Law College at Thane. Elevated to the Bench of the Bombay High Court on 1st July, 1987. Made permanent Judge of the Bombay High Court on 30th June, 1989. Was appointed as the Lokayukta of Maharashtra and entered the said office of the Lokayukta on 1st January, 1999.

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OMBUDSMEN, LOKAYUKTAS, LOKPALS ; CONCEPT AND WORKING WITH SPECIAL REFERENCE TO STATE OF MAHARASHTRA

SEMINAR : 25th March, 2004

(Venue: Technical Institute Hall of D.E. Society's Hall, near IMDR)

LIST OF PARTICIPANTS

1.	Dr. Madhav Godbole	-	CASS
2.	Admiral (Retd.) J.G. Nadkarni	-	CASS
3.	ACM (Retd.) H. Moolgavkar	-	CASS
4.	Air Marshal (Retd.) S. Kulkarni	-	CASS
5.	Gp Capt (Retd.) S. G. Chitnis	-	CASS
6.	Shri Harish Bhargava	-	CASS
7.	Dr. Pramod A. Paranjpe	-	CASS
8.	Shri N. N. Sathaye	-	CASS
9.	Gp Capt (Retd.) S. R. Purandare	-	CASS
10.	Wg Cdr (Retd.) S. D. Karnik	-	CASS
11.	Brig (Retd.) N. B. Grant	-	CASS
12.	Maj Gen (Retd.) Vishnu Mulye	-	CASS
13.	Brig (Retd.) R. R. Palsokar	-	CASS
14.	Shri V. L. Date	-	CASS
15.	Dr. K. V. Menon	-	CASS
16.	Prof. A. V. Bhagwat	-	CASS
17.	Ms. Swapna K. Nayudu	-	CASS
18.	Ms. Kalyani Chitra	-	
19.	Mr. S.D. Oak	-	
20.	Capt Nanak Chand Chaudhary	-	
21.	Mrs. Lata Chitnis	-	