

Research Article

India Ombudsman: Structural-Institutional and Functional Aspect

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ABSTRACT. The ombudsman is a concept belonging to the public administration in general and defends and protects citizens who are violated of their rights and powers against state institutions. The ombudsman, which finds areas of application at different levels of development in all continents of the world, is also applied in Asia. The purpose of this article is to provide information on the structural-institutional and functional aspects of the Asian Indian Ombu. In this context, the place and importance of the ombudsman for Indian democracy and public administration should be underlined.

Keywords: apartheid policy , racism, racial conflict.

A. INTRODUCTION

The ombudsman is called the assistant, protector and advocate of citizens who have had their rights or powers violated, and is basically a concept related to politics, public administration and the state. For this reason, examining the ombudsman of a region, state, or continent can give some clues about the type of political organization, state-citizen relations, and level of democracy in that region. . Today, the ombudsman or the institution of the ombudsman, which has spread to all continents of the world, has become one of the important issues in the administrative reform of countries. The Ombudsman has drawn the attention of countries that have not yet adapted this institution to their own organs, with the successful practices of countries that have experimented and implemented this institution before, found scope and generalized. In Asia, which is one of the different continents of the world, these ombudsman institutions have been established in different states. The purpose of this article is to explain the institution of the ombudsman, which has spread to different continents of the world, through India, an Asian country. To this end, the article aims to give information about the Indian ombudsman institution based on its structural-institutional and functional aspects. In this context, the importance of the ombudsman institution for Indian democracy and public administration, its benefits and gains are highlighted.

In this context, first of all, attention will be given to the ombudsman at the general level. In the second part, the structural-institutional and functional aspects of the Indian ombudsman institution will be explained. Also in this study; The method of conducting an ombudsman review in India using English and Turkish sources, determining the rules, principles and processes in which the ombudsman is applied in an Asian country, revealing the importance of the ombudsman for a Asian country and giving an example of the spread of ombudsman in the world. was preferred.

B. METHOD

This study uses a qualitative approach with a literature review method to explain the performance of the Indian ombudsman. Moleong (2008) states that “qualitative research methods are a research procedure that produces descriptive data in the form of written or spoken words of people and observed behaviors. Qualitative research requires guidance in formulating substantive theories based on data.

C. RESULTADO AND DISCUSSION

1. Ombudsman concept

The Ombudsman is an independent body that receives complaints from citizens about erroneous actions and procedures of public administration and conducts reviews and audits of such complaints (Fowlie, 2008). The ombudsman has a wide power of research and examination on the operations, actions and behaviors of public administrations, but this institution cannot make binding decisions like the courts (Yıldırım, 2014). The Ombudsman examines citizens' complaints against public authorities in an objective, honest and ethical manner, and defends and supports citizens against public administration. Therefore, among the qualifications of the ombudsman; There are aspects such as independence, impartiality, public accountability and reliability (Abdioğlu, 2007). In addition to this, the characteristics of the ombudsman are as follows (Uğurlu, 1997; Hill: 1976):

- o Established by law,
- o Autonomy,
- o Working outside public administration (administration),
- o Work independently of the legislative and the executive,
- o Be an expert institution,
- o Impartiality,
- o Be an institution easily accessible and enforced by the public,
- o It protects both parties between the public and the public administration.

The core qualities and characteristics of the ombudsman listed above are the aspects that make an ombudsman an ombudsman. Indeed, the establishment and operation of the mediator in accordance with legal regulations, independence, impartiality and autonomy, external control of the public administration, expertise, easy accessibility of the public, and being an assistant not only to the public but also to the public administration are some of these aspects. According to the definition made by the International Bar Association (IBA), which is frequently quoted and accepted in the academic literature, the ombudsman is authorized by the constitution and with legal action on behalf of Parliament, the ombudsman can act on behalf of the Parliament, which has the duty to examine the institutions and organizations, make suggestions against the erroneous actions of the administration or the public administration, submit the report they have prepared to the Parliament and legally.

A civil servant or institution independently headed by a responsible officer of Parliament (Sapers and Zinger, 2010; Eren, 2000). Moreover, according to Hill (1976), the mediator is a public authority

is an institution that prolongs the examination in the improvement of the performance of the administrative audit after the decision has been taken by It submits its reports to the competent public authority at the end of its examination. Moreover, according to Oytan (1975), who made an explanatory definition of it, the mediator "appointed by Parliament in principle, but who is independent both against the government and against Parliament, compensates the actions and operations of the administration . She is endowed with a broad investigative and investigative authority, which decides on complaints filed by people who do not see her in any way, to reveal the injustices of the administration, prevent abuses of discretionary power , respect the legislation and ensure compliance, It is an institution that aims to make characterless proposals and finally to propose the necessary reforms for a better execution of public services.

As understood, the Ombudsman, within the authority he receives from the Parliament, evaluates, analyzes and concludes the complaints received from the citizens with systematic rules and principles, which are completely independent and impartial from the organs of the Government. and Parliament, It is a structure that makes suggestions to public authorities and employees in order to correct the negativities of its work,

presents an annual activity report to Parliament regarding the activities and transactions it has carried out during the year, and is in intensive information exchange and communication with the media and the public. The roots of the ombudsman are based in Sweden (Rowat, 1962) and the existence of this institution dates back to the 19th century (Ruppel-Schlichting, 2013; Mitchell and Doane, 1999). In fact, the ombudsman appeared for the first time in Sweden in history and became a constitutional body (Erhürman, 1998). The country that established the ombudsman structure after Sweden was Finland in 1919, which was heavily affected by the Swedish system. Mediation institution, in particular II. After the World War, it spread to various continents and countries around the world gradually and wave by wave. Indeed, after Finland, Denmark in 1955, New Zealand in 1962 and Norway in 1963 established the ombudsman system. Today, the institution of the ombudsman is established in many countries and continents, including the United States (USA), France, England, Italy, Spain, Israel, India, Nigeria, Tanzania, Ghana, Poland, Argentina and Portugal. It is applied at the municipal level (Büyükcavcı, 2008; Gellhorn, 1966; Abedin, 2013). As is understood, the institution of the ombudsman has become a developing institution which has cost the world dearly and after Sweden it first spread to other Scandinavian countries and from here to most countries from Europe, America, Oceania, Africa and Asia and has been improving (Doğan, 2014). This institution is II. Among the reasons Sweden and Finland showed great expansion and development after World War II; "The great impact of the socio-economic and political conditions of the countries, the increase in the functions and duties assumed by the State, the education of the public, the increase in participation in the administration, the development of democracy and the rule of law, the interest in the protection of human rights" (Baylan, 1978; Maulion, 2006; Özgül, 2013; Kestane, 2006). Indeed, the institution of the ombudsman has a meaning which is linked to all the questions mentioned above and which gives them added value. Therefore, there is a direct relationship between the significance of the above issues in the historical process and the spread of the ombudsman institution. Because the institution of the ombudsman is a structure that has the potential to contribute to an equitable administrative order based on democracy, the rule of law, human rights and justice, according to its qualifications and aspects.

2. Ombudsman in India

The ombudsman or ombudsman institution in India will be explained in the latter part of the study based on its structural-institutional and functional aspects. In this context, first of all, general information will be given according to aspects such as the creation, functions, appointment and status of the ombudsman institution. Then, information will be given on the acceptance of complaint requests from the ombudsman institution, the working methods, the finalization of inspections and the functional aspects of inspections, depending on effectiveness and efficiency. However, before moving on to statements regarding the Indian Ombudsman, the political structure and organization of the public administration of India will be discussed in general as they relate to the Ombudsman. a. India's political structure and public administration The state form is based on federalism¹ (Parlak and Caner, 2009). India today is governed by a parliamentary system of government. It is an independent, secular and democratic republic (Tripathi, 2009). The Constitution of India, which guides current and public policies, was adopted by the Constituent Assembly on November 26, 1949 (Abadan, 951) and came into force on January 26, 1950 (KTO, 2008; Mohanty, 2014). There are roots of British colonial rules applied in the past in the organization of the state and public administration in India (Chakrabarty and Chand, 2012; Chakrabarty, 2008). Indeed, the Indian legislative system is based on a two-structure system, as is the case of the members of the British Commonwealth (Brown, 2006), and the Parliament is based on two basic principles: the "People's Assembly (Lok Sabha) and the "National Council (Rajya Sabha)". Organization (Parlak and Caner, 2009). Executive order in India, through the President, Prime Minister and Cabinet, is ongoing. However, the duties and responsibilities of the Prime Minister and the Council of Ministers are more numerous (Güney, 2014). Unlike other countries with Anglo-Saxon law and administrative tradition in India, there is a demand for administrative jurisdiction, and the "Supreme Court" has the distinction of being the largest administrative court in the country. In addition, there is also "National Informatics Center Services Incorporated-NICSI" with the title of administrative tribunal in India (Parlak, 2009; Brown, 2006).

b. Indian Ombudsman

1) General information on the Indian ombudsman: structural-institutional

Aspects There is no classic federal and general ombudsman institution at the state level in India (Tripathi, 2009). However, in some states at the regional level (Cooray, 2000; Carmona, 2011), ombudsman-like institutions called Lokayukta have been established (Mohapatra, 2013; Satyanand, 2014; Jha, 2013; Saxena, 2003). The concept of ombudsman in India is that the Administrative Reform Commission recommended the establishment of an ombudsman at both central level (Lokpal) and state level (Lokayuk) in 1966 with varying degrees of power (Stark, 2010; Joshi., 2003; Mohanty, 2014) is based on the report "Interim Report on the Problem of Redress of Citizens" (Jain, 1983). The overall rationale for this report is explained as "eliminating general injustice in citizen perception and gaining trust by increasing the effectiveness of public management" (Mohapatra, 2013). Again in this report, recommendations were made by the Administrative Reform Commission on the following key issues (Chakrabarty and Chand, 2012):

- o Establish Lokpal (central) and Lokayukta (state) institutions to deal with corruption and public complaints,
- o Implementation of a performance-based budget in all development departments,
- o Establishment of a central personnel agency at the center (Directorate of personnel and administrative reform) under the independent personnel directorates and cabinet secretariat in each ministry,
- o Appointment of Regional Development Manager as Managing Director of Zilla Parishad and authorization of regional level development responsibilities with Zilla Parishad (to be trained by selected participants),
- o Establishment of the Interstate Constitutional Council in accordance with Article 263 of the Constitution to manage relations at the center-state level,
- o By increasing the competitiveness and performance powers of state employees, thus providing great opportunities
- o Establishment of a Constitutional Administrative Court to adjudicate civil servants' complaints,
- o Develop a positive organizational culture and a motivational climate in government organizations,
- o Depoliticization of services in relations between ministers and civil servants.

Although there have been efforts to establish an ombudsman in India since 1962 (Jha, 2001; Rai and Singh, 1976; Mathur, 1963), as part of the report offered above (Mohapatra, 2013), the law Lokpal (Ombudsman) (Bill) 2 was passed by the People's Assembly (Lok Sabha) in 1969. Pending the National Council (Rajya Sabha), it was tabled by Parliament on the grounds that it would cause political unrest in the country. This bill was resubmitted to the above-mentioned bodies in 1971, 1977, 1985, 1996, 1998 and 2001 after being drafted by the Joint Committee of Parliament and the Standing Committee on Home Affairs. Parliament has always left its final conclusions regarding the government's final decision unresolved (Jiaxing and Cheong, 2008; Rowat, 1973; Sanchez, 2012). Hence, the Lokpal Institution, which is believed to operate at the national level in India, has not been established till today. However, in India, there are ombudsman institutions established by legal regulation called Lokayukta at 3 different levels of the state. In Lokayuk, he is appointed by the Governor, who is the head of the executive branch of the state (Malik, 2007). In appointing the mediator, the governor consults with the Chief Justice of the State Supreme Court and the Leader of the Opposition in Parliament. If there is no such leader in Parliament, he must consult a parliament elected by a majority vote in Parliament. In contrast, in Lokayuk (ombudsman), he is removed by the governor for reasons such as insufficiency and negligence (Jha, 2000).

The Lokayukta are independent and impartial in their duties and actions. For this reason, these institutions cannot become members of parliament, engage in lucrative business activities or ventures, and they have no relationship with political parties (Jha, 2000). A person to be appointed ombudsman in India must have the qualifications of a judge (Waseem, 2011). In general, a person to be elected to Lokayuk should have the qualifications of a Constitutional Court judge or a chief justice of a high court (Jha, 2000). On the other hand, the Lokayukta commemorate the horses for a period of 5 years (Weeks, 1978) and they

do not have the possibility of being re-elected (for the second time) (Malik, 2007). 2) Information regarding Candidacy Level of Indian Ombudsman: Functional Aspects In the State of Rajasthan, complaints can be filed by every citizen in areas pre-determined by law (The Rajasthan Lokayukta and Up-Lokayuktas Act, 1973). Complaints to Lokayukta in general in India should not belong to 1 year ago and should be done according to rules and regulations in a predetermined way. In Lokayukta, the institution makes a preliminary assessment of a complaint it receives, according to whether it falls within its scope of control and other criteria. After that, a preliminary assessment is carried out and once a complaint is forwarded to the Lokayukta review area, the institution sends a copy of the complaint to the employees of the office and the competent authority is informed of the problem. Then, depending on the outcome of the subject, the competent authority is clearly informed and suggestions and recommendations are made (Jha, 2000; Weeks, 1978). In India, the Lokayukta have the right of access to all documents and information of a public nature, with a few exceptions (Weeks, 1978). Therefore, Lokayukta is in contact with public administrations. They inform the competent administration for the solution of the complaint that reaches them and can ask them for the necessary information and documents. In India, the Lokayukta prepare an annual report and by criticizing the misconduct of government organizations, they help the Parliament (at state level) to correct the problem and ensure that a legal arrangement is reached in this area. (Jain, 1983). These annual reports are presented to both the Governor and Parliament (Jha, 2000). For example, Lokayukta in the state of Maharashtra submits an annual report to both the governor and all wings of parliament (Weeks, 1978). In addition, the Lokayukta maintain significant relationships with the media and news organizations (Weeks, 1978). This situation increases the power of the Lokayuktalar in India and allows them to gain the support of political and public control. Thus, thanks to Lokayukta, a relationship and integrity are ensured between administrative control, political control and public control.

The Lokayukta are not a court in India. They have no final decision-making power. Therefore, the real power and influence of these institutions increases with the resolution process and the communication channels they have undertaken with the public administration, Parliament and the public. In fact, Lokayukta makes suggestions and recommendations to correct problems and deficiencies of public administrations during the year, regularly informs Parliament about their actions and activities during the year and shares what is happening with the public through the media. With these characteristics, Lokayukta becomes both a service and duty assistant of the public administration and a very effective defender of the citizens.

Regarding the determination of the efficiency and productivity levels of Lokayukta in India, you will find below the number of complaints received by certain ombudsman offices throughout the year and figures on the number of these complaints which have been resolved. Additionally, some achievement points recorded by Lokayukta are shown below. In this way, some clues about the importance of ombudsmen for Indian democracy and public administration can be obtained.

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Lokayukta in the state of Madhya Pradesh received a total of 84375 complaints from 1982 to 2001. The number of cases opened by Lokayukta after the preliminary examination was 53651. Again, 14378 of these complained. It was sent to management as a recommendation to resolve the issue. Additionally, 16,121 such complaint files have been registered (Lokayukt Organization Madhya Pradesh, 2014). As part of these results, Lokayukta in the state of Madhya Pradesh decided that 26% of complaint files are faulty and that the relevant public administration should take action to correct its decisions.

In addition to the above information, Lokayukta in Andhra Pradesh received 3060 complaints worth investigating in 2011 and 5346 complaints were dismissed. This situation undoubtedly shows that people can reach the ombudsman easily and with the least expense, they can be protected from the mismanagement practices of the state and public administration bodies, and the level of efficiency and

productivity of the public administration has increased. Indeed, most of the complaints lodged with the ombudsman have been dismissed without examination. This proves that citizens can directly access the ombudsman without incurring any additional cost or procedure. On the other hand, in the state of Uttarakhand, many problems have been solved on the initiative of Lokayukta and great successes have been achieved in a short time. Among these; “75 teachers from Uttarakhand state have applied for services in Uttar Pradesh state and Uttarakhand government has acknowledged this with ombudsman initiatives, responded to complaints from Dehradun citizens over shortage of water, advised the payment of bonuses to contribute to the daily wages of the workers, He tried to draft an employment law for his dependents, issued a decision to the authorities to express his concerns about Doom Valley in part of air pollution” (Lokayukta-Uttarakhand, 2014). This shows that complaints filed with Lokayukta in India can include many different issues. In fact, the ombudsman examines the problem despite these various issues and tries to take the necessary measures. In this context, the Lokayukta are able to minimize bad management practices and lengths of roads in public administrations thanks to these surveys and the measures they take (Jha, 2000). In addition, the ombudsman can inform Parliament and other state bodies of the situation with the necessary measures and decisions to eliminate the problems resulting from the legal vacuum.

As understood, Lokayukta in India takes complaints from citizens quickly, directly and without exposing the cost burden within the state, and they take important initiatives and decisions in resolving the issue. In this framework, Lokayukta acts as a bridge of communication between the public administration and the citizens depending on the solution of the problem. Citizens can participate in the process of determining and implementing public policies through Lokayukta. This situation brings the Lokayukta to an important point in terms of democracy and public administration in India and increases the level of legitimacy of the citizen to political power.

D. CONCLUSION

In India, there is no practice of an ombudsman institution at the federal level covering the whole country. On the other hand, the implementation of the ombudsman institution in India has been implemented at the state level. In fact, ombuds institutions called Lokayukta have been established at the regional level in nearly 30 states across the country. Ombuds institutions (Lokayukta) in India conform to 8 basic qualifications and characteristics that make an ombudsman an ombudsman, created with reference to Ugurlu and Hill in the text. Indeed, ombuds institutions are designed to be impartial, independent and autonomous, established on the basis of a specific law. In addition, ombuds institutions have been established as an institution that can be contacted quickly, efficiently, expertly, objectively audits public administrations from outside and contributes to both public administrations and citizens.

Ombuds institutions in India contribute to both political and public scrutiny through their reports to Parliament and their relationships with the media. In this way, they contribute to democracy, human rights and the rule of law, even at regional level. As a result, the practice of the ombudsman office in India in Asia has contributed to the gradual and vague spread of the ombudsman in the world, and these institutional practices help parliaments to work more soundly and regularly as an important step towards the democratization. On the other hand, with the institution of the ombudsman, which is an important experience in terms of public administration as well as Indian democracy, public administrations are encouraged to use more "citizen, responsible, open and participatory" ways and methods. ". In this context In India, a local governance platform is being established where parties from the public, private and civil sectors will mutually negotiate with the demands of the ombudsman institution. Because within the body of the ombudsman; Principles such as “communication, participation, trust and responsibility” already exist. After the explanations provided so far, it can be concluded that: In India, the institution of ombudsman increases the level of trust in the state at the level of the citizens by contributing both to democracy and to the organizational structure and function of public administration.

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