

Q. 1. What is ombudsman? What are its characteristics? Discuss its powers and functions.

Origin of Ombudsman

Ombudsman is one of the unique machineries for the redressal of public grievances originated in Scandinavian countries. The Swedish constitution of 1809 provided for the first time the institution of ombudsman to protect the citizens against administrative injustice or abuse of power by public officials. It is appointed by Swedish Parliament to supervise the functioning of public officials as an independent authority. Thus, Sweden may be regarded as the pathfinder of ombudsman institution.

The success of the institution of ombudsman in Sweden, it attracted the attention of many countries. After the institutionalization of ombudsman in Denmark in 1954, plenty of countries expressed willingness to establish such type of institution in their respective country. More than 45 countries in Europe, Asia and Africa have adopted ombudsman type institutions with such modification as necessary to suit their respective socio-political and administrative structures. The institutions have been named differently as per their administrative traditions. For instance, the procurator system prevailed in Eastern Europe like Czechoslovakia, Hungary, Poland and Rumania plays an important role in redressing citizens' grievances. New Zealand became the first Commonwealth country to establish ombudsman in 1962. Similarly, an ombudsman for the UK was instituted by the Parliamentary Commissioner Act, 1964. In India, the Lokpal Bill, which is yet to be passed by the Parliament has the analogous objectives.

Meaning:

Ombudsman is derived from the Swedish word 'Ombud' stands for a person who acts as a spokesman or the representative of another person. Thus, in Sweden it means 'Commissioner' or an 'Officer' appointed by the legislature to handle complaints against maladministration by public authorities.

The Britannica Dictionary has defined 'ombudsman' to be officer of the legislature for investigating public grievances against the abuse of power by bureaucracy. It is, therefore, an authorized agency which works as a watchdog for administrative and quasi-judicial activities of administrative officials.

Characteristics: The institutions of ombudsman working in different countries have certain common characteristics. Some of them are:

- i.** The office of ombudsman is a constitutional post.
- ii.** It is an independent and impartial institution. It implies that it is independent of the legislature, executive and judiciary.
- iii.** Its officials are appointed by the legislature or by the head of the state.
- iv.** Its tenure of office is fixed by the constitution.
- v.** Its powers and functions are investigative type or scrutiny making. However, it can lodge recommendations on complaints after investigation over the case. In most cases its functions are advisory in nature.
- vi.** It possesses equal status with the judges of the highest judiciary of the country.
- vii.** Ombudsman cannot himself punish an offender but can only report to the highest authority for taking necessary actions.

Powers and functions: The powers and functions possessed by the ombudsman varied from country to country. In some countries ombudsman possess enormous powers, while in some countries they are restrictive in nature. Despite the institution of ombudsman perform the following significant

- iii. Supervises overall public officials and possess the power to prosecute any erring officials or may recommend departmental actions for removal or dismissal for any negligence in performance of his duties.
- iv. Investigates all kinds of administrative corruption.
- v. It can initiate criminal proceedings against every offending official in the court.
- vi. Even the judges of the court can be prosecuted by the ombudsman if they are found or partial in their judicial decisions.

Thus, the main functions of ombudsman is to relief to the aggrieved parties against maladministration, abuse of administrative discretion, corrupt practices, favouritism, nepotism, and political pressure bureaucracy.

Q. 2. What is Right to Information? Discuss its important provisions.

The Right to information is a comprehensive law passed by the Indian Parliament which confers on the people of India the legal right to get informed about the actions, decisions and even the policies of public officials from the governmental records, files and other public documents. The Act is to set a practical regime in order to promote transparency and accountability in the working of public authorities.

Constitutional basis of RTI:

The Constitution of India is itself a document containing plenty of provisions of rights and freedoms under Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. The independent judicial system especially the Supreme Court of India work as a watch dog in the protection and enforcement of these rights. In fact, the Right to Information is a part of our Fundamental Rights under Article 19(1) of the Constitution which includes freedom of speech and expression. The Supreme Court in a number of cases recognised and stressed the need for 'right to know' of Indian people. In the *Gupta Vs. Union of India* case, the Supreme Court categorically held that 'Right to Know' is a requirement of an effective participatory democracy under Article 19 (1) (a) of the Indian Constitution.

The Right to Information (RTI) Act, 2005

The Right to Information Act, popularly called RTI is an Act passed by the Parliament of India which received Presidential assent on 15 June, 2005, to provide for setting out the practical regime of right to information for citizens. The Act came into force from 12 October, 2005. The Act applies to all States and Union Territories of India except the state Jammu & Kashmir. It is important to mention here that the RTI replaces the erstwhile Freedom of Information Act, 2002, which became operational from 1 January, 2003.

In Assam, The Assam Right to Information Act was passed by the Assam Legislative Assembly in 2001 and received Governor's assent on 1 May, 2002. The Act came much before the passing of the RTI Act in 2005.

Objectives of the RTI: The RTI has been passed keeping in view of the following objectives:

- i. To secure access to information under the control of public authorities.
- ii. To empower the citizens, promote transparency and accountability in the working of Government.
- iii. To prevent corruption, and make our democracy work for the people in real sense.
- iv. To constitute of a Central Information Commission and State Information Commissions.
- v. To keep necessary vigil on the instruments of government and make the government accountable to the governed.
- vi. To enable smoother and greater access to information by replacement of the Freedom of Information Act, 2002.

Features of the RTI: Some of the salient features of the RTI Act are as follows:

- i.** The Act extends to the whole of India except Jammu & Kashmir.
- ii.** It shall apply to public authorities.
- iii.** All citizens shall have the right to information, subject to provisions of the Act.
- iv.** The Public Information Officers or Assistant Public Information Officers will be responsible to deal with the requests for information and also to assist persons seeking information.
- v.** Fee will be payable by the applicant depending on the nature of information sought.
- vi.** Certain categories of information have been exempted from disclosure under Section (8) of the Act.
- vii.** Intelligence and security agencies specified in Schedule II to the Act have been exempted from the ambit of the Act, subject to certain conditions.

Important Provisions and Sections of the RTI Act: The RTI consists of 31 sections. Following are some of the important provisions of the RTI Act:

Section-1 defines the Act as the Right to Information Act, 2005.

Section-1(2) states that the Act extends to the whole of India except the State of Jammu & Kashmir.

Section-2(f) states that 'information' means any material in any form, including records, Documents, Memos, e-mails, Opinions, Advices, Press releases, Circulars, Orders, Logs, Contracts, Reports, Papers, Samples, Models, Data material held in any electronic form or information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Section- 3 empowers that all Indian citizens shall have the right to information.

Section- 4 deals with the obligations and responsibilities of public authorities.

Section- 5 deals with the key functionaries and officers under the RTI Act.

Section- 6 (1) deals with the request of a person, who desires to obtain any information under the Act,

Section-7(1) deals with the time limit for the supply of required information. In fact, the information sought has to be supplied within a period of 30 (thirty) days of the receipt of the request. However, if the sought information concerns the life or liberty of a person, in that case, the information shall be provided within 48 (forty-eight) hours of the receipt of the request.

Section- 7 (4) deals with assistance to disabled persons to whom access to information is provided.

Section- 7(5) and 7(6) deals with the fee, charges prescribed for information and supply of information free of cost.

Section- 8 (1) determines with non-disclosure of certain information to any citizen, they include:

- i.** Information relating to integrity, security, sovereignty and strategic, economic and scientific interest of the state.
- ii.** Information which has been expressly restricted by any court of law to be published.
- iii.** If disclosure will cause a breach of privilege of Parliament or State Legislature.
- iv.** Information including IPR (Intellectual Property Rights) & trade secrets.
- v.** Information received in confidence from any foreign government.
- vi.** Information the disclosure of which would endanger the life or physical safety of any person.
- vii.** Information related to the process of investigation and prosecution.
- viii.** Cabinet papers including records of deliberation of Council of Ministers and other high level officials.

Section-11 deals with information related to third party.

Section-18 deals with duty and role of Central and State Information Commission as they may be, to receive and inquire into a complaint from any person.

Section-19 deals with the first appeal, second appeal, time limit for decision on first and second appeal and effects of Central Information Commission or State Information Commission.

Section-19 (8) deals with the powers of the Central Information Commission or State Information Commission.

Section-19(9) includes the power to require the public authority to compensate the complainant for any loss or other detriment suffered and or to impose any of the penalties provided under RTI Act.

Section-20 empowers the Information Commission to impose penalty on the Public Information Officer if the Commission is of the opinion that the Officer without any reasonable cause refused to receive an application for information or has not furnished the information sought for within the specified time under Sec. 7(1).

Section-22 of the Act is a non-obstante clause giving overriding effect to the provisions of the Act.

Section-25, the Information Commission is required after the end of each year to prepare a report on the implementation of the provisions of the Act during that year and forward a copy thereof to the appropriate Government.
