

The ombudsman question

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THE figure of ombudsman, with its current characteristics, owes its origin from Sweden; however, its roots may be found in ancient history. Within the Islamic legal system, for example, during the era of Abbasids, complaint handling agencies called "Diwan Al Mazalim" were established. These institutions seen to have been headed by a senior judge. Under Turkish rule the "Quadi al Quadat" the "judge of judges," exercised a similar function. Indeed, it has been suggested the idea of establishing an ombudsman occurred to the Swedish King Charles XII when he -- having suffered defeat at the hands of the Russian army at Poltava -- for a number of years was the guest of the Sultan in Turkey in the early 1700s.

The first Swedish ombudsman took office in 1809 and gradually the concept spread around the globe. As of 2005, including national and sub-national level, a total of 129 offices of ombudsman have been established around the world. Through the establishment of these offices of ombudsman, people's confidence in the executive branches has been regained.

Constitution of Bangladesh has provision for ombudsman in Article 77: "Parliament may, by Law, provide for the establishment of the office of Ombudsman." Article 77(2) states: "The ombudsman shall exercise such powers and perform such functions as parliament may, by Law,

determine, including the power to investigate any action taken by a ministry, a public officer or a statutory public authority."

It is expected that the ombudsman will act as a watchdog against maladministration, abuse and incompetence that causes harm or loss to the aggrieved citizen. Hence it is essential to ensure transparency, accountability and to curb corruption at all level of administration in Bangladesh.

Nowadays the Anti-Corruption Commission is functioning effectively, so the justification for an ombudsman may be questioned. However, the ACC is not an alternative to the ombudsman since only abuse of power for financial or other material gain comes under the jurisdiction of ACC. Jurisdiction of different guardian institutions needs to be distinctly identified to avoid overlapping and complementary role between the ombudsman and other pillars of national integrity system should be explored further.

What is ombudsman?

The ombudsman is an institution established under the constitution or by the legislature that receives and investigates complaints reported by individual citizens against any government and institution and recommend corrective actions.

Why ombudsman?

- Protects human and constitutional rights of the citizens.
- Works as an watchdog to oversee the activities of public officials and institutions.

- Promotes rule of law.
- Recognises that public agencies are supposed to serve the citizens.
- A person affected by the activities of the public agencies can get quick remedy.
- Promote morale values and confidence of the citizens giving a feeling that there is someone in their favour to hold the government accountable.

Ombudsman in different countries

The ombudsman takes different forms and names in different countries of the world. There are also differences in the power, function and jurisdictions of the ombudsman. There are offices of ombudsman in a number of developing countries.

In 1983, office of the ombudsman was set up in Pakistan under the name of "Wafaqi Mohtasib." In 10 states of India, offices of ombudsman or "Lokeyukta" have been established. With a view to establish the office of ombudsman at the central level the "Lokpal Bill" was introduced in the Lok Sabha in 1989 which was not passed by the parliament. The Constitution of Nepal (1990) also provides for the provision of ombudsman.

Norway is the first country to establish an ombudsman for the children in 1981 which is performing these types of functions:

- Promote and protect the rights of the children.
- Improve access to existing rights.
- Promote recognition of human rights not yet embodied in

legislation or practice.

In New Zealand, as per law, persons in prison or mental hospital can place their grievances before the ombudsman. There is a military ombudsman in Sweden and a parliamentary ombudsman in Finland.

Ombudsman is an extra-judicial alternative system. There are some activities of the administration that causes bad governance, but can not be challenged through a court of law. For example, if an application for construction of a building is refused by the authorities without any legitimate ground or an application made to the tax authority remains pending for a long time, citizens usually do not go to the court or it may be beyond the jurisdiction of the court. In such case the citizens have the opportunity to go to the ombudsman.

Status of ombudsman in Bangladesh

Article 77 of the Constitution of Bangladesh provides that parliament may, by law, provide for the establishment of the office of the ombudsman. As per the constitutional provision, the Ombudsman Act 1980 was passed which provides that a person of high integrity and having experience in legal or administrative field shall be appointed as ombudsman. The act gave the government power to make the office of the ombudsman effective through gazette notification.

In 2002, after 21 years of passing, the Ombudsman Act was made effective, but an earlier

decision of making the act updated was ignored. Till date the office of the ombudsman has not come into being.

In the context of emerging needs and success of other countries, Bangladesh has set up national sector specific Tax Ombudsman office. After publishing gazette of tax ombudsman in July 2005 the office has been set up in July 2006. In Bangladesh there is also ombudsman in the private sector: Brac and Diabetic Association of Bangladesh are examples.

Ombudsman Act 1980

Appointment: The ombudsman shall be appointed by president on the recommendation of the parliament. [Article 3(1)]

Qualification: Parliament shall recommend for appointment as ombudsman a person of known legal or administrative ability and conspicuous integrity. [Article 3(2)]

Tenure: The ombudsman shall hold his office for a term of three years, and shall be eligible for reappointment for one further term. [Article 4(1)]

Removal: The ombudsman may be removed from his office by the order of the president passed pursuant to a resolution of parliament supported by a majority of not less than two-thirds of the total members of parliament on the ground of proved misconduct or physical incapacity. [Article 4(2)]

Remuneration and other conditions of service: The remuneration, privileges and other conditions of service of the ombudsman

How Ombudsman is different from Court of Law	
Ombudsman	Court of Law
Works on administrative justice.	Works on legal justice.
Cannot change any decision taken by the government.	Can challenge a decision made by the government on legal ground.
Decisions are considered as recommendations.	Decisions have mandatory implications.

shall be the same as are admissible or applicable to a judge of the Appellate Division. [Article 5]

Functions

- **Investigation:** The ombudsman may investigate any action taken by a ministry, a statutory public authority, or public officer.
- **Report:** If, after investigation of any action, it appears to the ombudsman that injustice has been caused to complain or to any other person in consequence of maladministration in connection to such action, the ombudsman may, by a written report, recommend to the competent authority concerned that such injustice should be remedied in such manner and within such time as may be specified in the report.

- **Annual report:** The ombudsman shall prepare an annual report concerning the discharge of his functions and submit it to the president. [Articles 6 & 9]
- **Power:** For the purpose of an investigation, the ombudsman may require any public officer or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document. [Article 8(1)]

Exemption

With gazette notification, the government may exempt any public officer or class of public officers from the jurisdiction of the ombudsman. [Article 15]

Immunities: No suit, prosecution or other legal proceeding shall lie against ombudsman or any member of his staff in respect of anything which is done in good faith. [Article 16(1)]

Recently a seminar was organized by Manusher Jonno Foundation, (MJF) and Transparency International Bangladesh TIB. Seminar paper followed by open discussion recommended to review the act in following areas:

Tenure: The ombudsman shall hold office for five years instead of three years as stipulated in the act.

Jurisdiction: Under the 1980 act, ministries, statutory public authorities and public officers all fall within the jurisdiction of the ombudsman. However the jurisdiction does not include several categories of public functionaries.

Recommendation of the Law Commission may be considered which proposed widening of the mandate of ombudsman including illegal acquisition of property by public functionaries.

Self Regulation: In order to ensure transparency and accountability of ombudsman, self-mechanism of ombudsman should be developed without revealing identities; information of all activities should be made available and regularly updated for public information through website.

of Article 15 should be dropped from the act.

Budget: The act has made no provision of financial resources for the ombudsman, but it should have full freedom to draw its own budget to be provided under the category of "charged expenditure" of the national budget.

Commitment: If ombudsman is not satisfied with the action taken or proposed to be taken by the competent authority, a special report should be made to the higher authority including court.

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Translated by Arif H. Khan. Both writer and translator are program managers in Manusher Jonno Foundation.

Source: Seminar Paper on "Ombudsman for Good Governance in Bangladesh: Why & How?" by Dr. Iftekharuzzaman, Executive Director, TIB.

Mr. Jalil's capitulation

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THE other day, in a TV programme a new reformist of AL -- who later went to Canada -- commented with a glowing face that it was rather easy for journalists to portray things the way they liked, which allowed them infinite leeway to balance things as well, and that political leaders were always under strict observation and the setting was all the more critical now. Yes, leaders are very deservedly undergoing testing times these days.

Admittedly, all journalists are not committed to sheer objectivity. However, the leader's observation about the journalists is a damned lie, because the readers of today are smart and intelligent enough to put things in their true perspectives and read between the lines. That the new reformist was again trying -- in the conventional way that our leaders are used to -- to dupe the audience, has been substantiated by what AL General Secretary Abdul Jalil has done.

Arguably, most of our leaders have faults. The Jalil "capitulation" has, however, adorned them with the "frailty" epithet as well. There is no defense for Jalil, because if he did not have a guilty mind, he would not have done so even under duress, if there was any. Yes, who wants to languish in jail and that, too, after leading a heavenly life for many a year?

Yes, we have heard of many legendary leaders not bowing down to any pressure, and remaining dedicated to their commitments despite odds and threats of all sorts. Nelson Mandela passed 29 years of his life in prison. Bangabandhu had to sleep for months beside the grave dug out for him in the Pakistani jail. Four national leaders of Bangladesh had to sacrifice their lives in jail because they remained steadfast in their principles.

The world has seen many more leaders of the kind stated above. But, all of them were leaders of yesteryears. Why should, however, leaders like Abdul Jalil be like the leaders of the past? After all, commitment, dedication, or such things are just alien to modern-day leaders. It has again been proved that they are in politics only for self-aggrandizement by any means, fair or foul. Thus, suffering hardship, let alone sacrificing, is just impossible for them.

No, my intention is not to condemn Abdul Jalil for his mercy petition from the jail. I, however, find it essential to register strong reservations about his remark that Sheikh Hasina was responsible for the current state of affairs in Bangladesh. Sheikh Hasina is hardly beyond mistakes or criticisms. Allegations of many sorts have been leveled against her.

Legal action against her is being intensified and senior leaders of AL are out to oust her from the party.

However, the recent remarks by Jalil regarding Hasina must have been a pleasant surprise for all her detractors. Most importantly, this promises to become a weapon for BNP-Jamaat and their die-hard fans. Yes, Sheikh Hasina was more or less despotic. But, to my mind, it was not her "authoritarian" leadership but her "overdependence" on the forces of money and muscle that has brought such an agonizing day for her today.

Reportedly, Sheikh Hasina made an extra effort to make Jalil the party General Secretary, bypassing more deserving party leaders. However, the Jalil "capitulation" also testifies to the glaring fact that rewarding undeserving ones is always counterproductive. Yes, Jalil's remark regarding Hasina truly vindicates, or rather, better serves the vested interests of the BNP-Jamaat clique, which turned the country into a veritable paradise for lootocracy and anarchy.

The people, however, know pretty well that it was the misgovernance as well as excesses of the regime that brought the country to such a pass that the armed forces had to step in and help set up an interim civil administration. Truly, the whole of the country watched with great interest the "dialogue" drama involving BNP's Abdul Mannan Bhuyian and AL's Abdul Jalil.

However, the people will never forget the horrific scenes of bloody confrontations on the streets of Dhaka, following the failure of the dialogue between the two leaders. One "hero" of that drama is now playing the flute of reform. And, the other has resorted to the "crying" technique. Most probably, they were not allowed by the two ladies and party leaders to reach a consensus in the dialogue.

However, the claim of making "progress" in the dialogue, especially by Abdul Jalil, was a real joke, which turned really sour in no time. Anyway, the bottom line is that the Jalil "capitulation" has pushed the last nail into the coffin of Bangladesh's modern-day leaders' credentials and credibility.

The few who still had confidence left in the modern-day leaders must now have been disabused of their mistaken belief. I believe "capitulation" of a veteran leader like Abdul Jalil amply proves that the nature of our modern-day leaders has reached the nadir of degeneration, from which no come-back of that old, rotten block will be welcomed by the people, who are so very tired of them.

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My own little Palestine

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MAGINE a country where troubles started with British masters. Drawing lines, separating people, making countries. Some gained freedom, others became prisoners.

Soon, very soon, the original inhabitants find themselves becoming a numeric minority. More settlers take over land and build settlements. Large construction projects also arrive, displacing entire villages. The gentle days are over.

The inevitable happens. The indigenous people lose their so-called gentleness. A charismatic leader rises and unites the disparate groups -- groups that formerly had no cohesion, structure, or politics. An armed guerilla group is born, the stated intention is to defend rights and win freedom.

For a time, the world is enamored of the figure of the romantic guerilla. But soon, other headlines dominate and they move on. Neighboring states also support the movement for a time. Less out of solidarity, more out of a desire to make trouble for their enemy. Mahmoud Darwish said in a Godard film: "The world is only interested in us because of who our opponents are."

Eventually the neighbouring states stop supporting the guerillas. The settlers are also increasingly well-protected. Lighting terrorist strikes that cause damage become difficult. The once proud guerilla movement is corroded to the point of random kidnapping of foreigners. No faction claims credit, thus every person is a suspect. Even those who have assimilated and taken mainstream jobs are not protected. It all depends on the way you look, the colour of your skin, the shape of your eyes, your last name.

Everything I wrote, it happened, more or less. Not far away in the Middle East, but very close to our own homes. Our hearts bleed for Palestine, but when will they bleed for our own people? This is an elegy for the Chittagong Hill Tracts.

Exhausted and under-funded, the guerilla movement drops the demand for full independence. Now they want autonomy, some even say partial autonomy would be acceptable.

The charismatic guerilla leader comes out of hiding. To everyone's surprise he finally recognises the right to co-existence. Some praise his maturing political approach, others remain suspicious. After top-secret talks, a historic peace treaty is signed. Some observers are jubilant: an end to the fighting? But among the guerilla movement's own ranks, there are cries of betrayal. The movement splinters into two. The more radical group rejects

the treaty, and vows to continue fighting.

The second inevitable happens. Now the two factions start fighting each other. Brother against cousin against friend. Fratricide is the order of the day, the movement for independence and rights is long forgotten.

The indigenous people are at a twilight crossroad. Independence is a shattered dream, many are so exhausted they want peace at any cost. Their children scatter all over the world -- Australia, England, America, any place that will give a visa. A new diaspora is created. The next generation is exhausted. "Give us freedom" becomes "Just give me a job and some dignity."

was being treaded along.

Friday late afternoons, I used to take my father for a car ride along with my mother. On weekdays, traffic tends to be heavy, and there is hardly any road in Dhaka that can give the feeling of a highway drive. Hence, we used to drive to the end of the cantonment and have tea in a nice tree covered spot. I used to drive and he used to sit next to me and recite his favourite Bengali poems. With time, as he started forgetting the rhymes, I had to help him finish the poem, and at the end when he could not at all recall it, I recited the poem myself. When I recited, the glow of happiness sparked in his eyes as he intently listened to the words that his heart could relate to but the mind had difficulty grasping. When I would ask him whether he was enjoying the ride, he would reply: "Khuby" (very much). Then I would tease him by asking: "Should we now go home?" Like a child on a fun ride unwilling to return home, he would reply: "Aar ektu porey" (a little later). In the last one year, in his absence, I have lost the charm of Friday afternoons, and find more comfort in silent reflections than in the noise of the roads that used to be overwhelmed by the poetic chat of a father and a son.

When I returned from work, my father would cherish the pre-dinner conversation that we used to have. Although he used to repeat things, the patient listening worked magic by giving him a sense of empowerment because his voice was being heard by none other than his son.

Sometimes he used to put his head on my shoulder and hold my hands in silence. No words were spoken, but our souls could reach each other even if our voices were silent. Particularly, whenever I was going through any difficulties or was upset, he had this sixth sense which felt it, something which I still find difficult to explain. As I now return from office, that empty corner position of the drawing room sofa gazes at me as helplessly as I gaze within myself.

The green, tidy, and short grass on my father's grave looks as lively as my father was in the best of his days. Being on the lakeside -- wind, water, soil, and plant join hands to create an ambience of serenity that stretches much beyond the immediate horizon. As I stand and try to come to terms that one year has gone by, suddenly time and