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A REFLECTION ON OMBUDSMAN
ITS ORIGIN IN ANCIENT INDIA

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A REFLECTION ON OMBUDSMAN - ITS ORIGIN IN ANCIENT INDIA*

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Of late, several authors have written books and articles on the institution of **Lokayukta** in India, pointing out that the concept of the Ombudsman originated in Sweden early in the nineteenth century. As time passed this concept came to be recognized by some other countries in the world, notably England, France, Canada, Japan, Austria, Australia, India and Pakistan, etc. as well as some countries in Africa where comparable Ombudsman institutions have developed therein.

What is this idea of Ombudsman about? This term has been defined in various Acts of legislature. The standard definition will, however, be found in the 1974 resolution of the Committee of the **International Bar Association**, reading as follows:

An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective actions and issue reports.

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Thus, the emphasis, in essence, is on accountability and the Ombudsman claims the same from the public servants while investigating any grievance or allegation relating to maladministration and misuse and abuse of power or corruption.

Was the principle of accountability recognized in India during the period before Christ? Were administrative abuses, maladministration and corruption frowned upon in ancient India? Was there anyone who could investigate the grievances of the public against the executives and suggest the remedies? Or did no such system prevail during the long glorious period in ancient India? It may at once be stated that there is no systematic literature on the point written during the age of **Vedas** and **Brahmanas**. There are, however, some scattered writings throwing light on the same. Scanty materials are available in a few books of **Dharmashastras** and **Smrities**, **Mahabharata** and **Kautilya's Arthshastra** as well as the edicts of **Ashok** inscribed on stone pillars and rocks.

It is a matter of common knowledge that the monarchy was the prevailing form of government in ancient India. The **Maharajas** and **Rajas** (i.e. kings) were the rulers of the land. However, for efficient and smooth governance, the king appointed ministers, civil servants, the police, the military and the judiciary to aid and advise him in administration, although the ultimate responsibility rested with the king. The ministers were responsible for the maintenance of law and order and also for

seeing that the king did not follow the wrong path. The people, including the king, had to act in accordance with the injunctions of **Dharma**.

Checks and limitations were imposed with a view to regulate and, to a certain extent, mitigate the powers of the king and keep him within bounds. He was not to act whimsically but to rule according to the dictates of **Dharmashastras**. He was also enjoined to seek the advice of his ministers, his **purohitas** (Guru) and other learned **Brahmanas** (vide **Manu IX 320** and **Gautam XI 12-14**). In his administration of justice the king was to be checked by the Judges and **Sabhyas** who were to render advice to him without any fear (vide **Manusmriti VIII 336** and **Yagya I 307**). The king was enjoined to inflict heavy fine on himself for his acts which were contrary to the principles of **Dharma** as would be evident from Verse 336, Chapter VIII of the **Manusmriti**.

For an offence for which an ordinary citizen was to be fined one silver coin, the king was to be fined for the same offence one thousand coins. Based on the principle that in not restraining himself the king could not discipline another, it was ordained that having committed an offence the king was liable to punishment. **Manusmriti** even goes to the extent of allowing the subjects to abandon a worthless and misguided tyrant king (vide **Manu VII 27-28**).

Lawmaking by the king in the modern sense was almost nonexistent in ancient times and his legislative action was

extremely limited. The king was to find the law required for the decision of causes from the **Vedas, Dharmashastras, Angas, Upa-vedas, Puranas**, customs of the place, cast and families which were not opposed to **Vedas**, and the usages and the opinions delivered by the Assemblies/**Parishads** of persons learned in the **Vedas**.

The king was responsible for the welfare of his people and every person had a right to approach the king, or the officer appointed by him, for the redress of grievances. A glimpse of the system of administration in ancient India may be seen from the two most celebrated books, namely, **Mahabharat** and **Kautilya's Arthshastra**.

MAHABHARAT

Mahabharat is one of the greatest epics of India. On the basis of internal and external evidence, scholars have concluded that **Mahabharat** was written during the long span of time between the sixth century B.C. and the third century A.D. It deals with the great war between **Kauravas** and **Pandavas**, said to have occurred in 1900 B.C. (although some scholars fix its period closer to 3101 B.C. or 2448 B.C.). The epic **Mahabharat** also delves into various topics concerning the kings, the society and the individual. Like other topics, it also expands upon the political administration.

In **Shanti Perva** of **Mahabharata** it is pointed out that the

king was to have a council of ministers to advise and assist him in conducting the affairs of the state. A person who was highly learned, brave, humble and virtuous could be appointed as minister. Tolerance, honesty, eloquence and nobility were other essential qualifications. However, even a person having all virtues and qualifications was not to be appointed a minister if he was not loyal to the king. The ministers were required to discharge such duties as were assigned to them by the king. At the same time, it was also the duty of a minister to place a check on the king's autocracy so that he did not misuse or abuse his power. **Mahatma Vidur**, the Prime Minister of **Kauravas**, had advised his king **Dhritrashtra** and the prince **Duryodhana** many times to do justice to the **Pandavas** by giving them **Indraprastha**. Unfortunately, the king and the prince paid him no heed and, in consequence, brought about their ruination.

The **Shanti Perva** of the **Mahabharat** mentions that a person after serving as minister for some time may not remain virtuous, may start accepting bribes and may steal the state's properties. Hence the king should set spies after him to keep him under control.

The **Mahabharat** refers to the civil servants (**Bhritya** or **Rajbhritya**), their qualifications, recruitment and duties. Generally, there were two classes of civil servants, namely, the **Pariparshvik** and the **Vahichasa**. The former category of civil servants included those servants who belonged to the personal

staff of the king, namely, personal attendants, bodyguards, ministers, private secretaries, etc. The other category of civil servants consisted of those employees who were posted outside the capital, such as clerks in different departments, soldiers, spies and others.

The **Mahabharat** points out that as negligence, idleness or selfishness of the civil servants could cause loss to the king, the bureaucrats should be kept under strict state observance and control. They should neither speak nor do evil against the king. They should not misbehave with the subjects. Also, if the king did not restrain them from harassing the subjects, it showed his inefficiency. Recognizing the principle of accountability, it has been provided in **Udyog Perva** 37.24 and **Shanti Perva** 94.31 of the **Mahabharat** that the most effective step to control the civil servants was to take disciplinary action against the delinquents, and those civil servants who refused to perform their duties, or who acted in derogation of their duties, should be dismissed forthwith. Degradation of civil servants was another method to check the disobedient and idle (**vide Shanti Perva** 84.30). However, no one was to be punished without proving his guilt, and it was laid down that the king should, personally or through his agents, inquire into the cases of allegations (**vide Sabha Perva** 6.63 & **Shanti Perva** 112.33). These rules were obviously based on the concept of providing protection to the citizen against the authority of public servants.

KAUTILYA'S ARTHSHAstra

Kautilya was the Chancellor of the Court of **Chandragupta Maurya**, who ruled over the major part of India during the period 324 to 200 B.C. The most celebrated **Arthshastra** was composed by **Kautilya**. It deals in detail with the various facets of public administration. **Kautilya** emphasized the employment by **Samaharta** (collector) of a host of spies for observing superintendents of various departments. These spies were to be employed to test whether the state officers took bribes. He prescribed that the king should protect his subjects from harassment by the accountants and scribes, that he should ascertain the doings of the state officers through spies, honour those who conducted themselves well, severely punish those who were dishonest and should deprive those who took bribes of their wealth and banish them from the country. Significantly, even **Manu** (vide VII-122-124, **Panchtantra** vide I-343) **Vishnudhar Mottara** had spoken of the rules. **Sukramitisar** (I-334-336) likewise states that the king should learn daily at night from his secret spies the intentions and actions of his subjects and officers. Spies were, in fact, said to be the king's eyes.

The spies were entrusted with the task of spying on the work of various officials in the Mauryan state, detecting whether they lived beyond their means and bringing intelligence of corruption and sedition to the king. The conduct of all the employees of the state and also their source of income and expenditure were

regularly scrutinized by the **Gopas** and **Shaneks** as well as by the spies set for the purpose.

The **Arthshastra** laid down that the ill-gotten money of the delinquent officer should be confiscated and the concerned employee should be transferred to another department. He further laid down that giving false information or withdrawing the claim at the behest of the officer involved constituted a grave offence deserving capital punishment. **Kautilya** urged that the king should punish those civil servants who committed departmental offences causing maladministration and financial loss, and advised him to keep a watch over their activities.

EDICTS OF ASHOK

Ashok, the great emperor of India, ruled from 272 to 232 B.C. His vast empire spread from Orissa in the east to modern Afghanistan in the west and from the Himalayas in the north to Mysore in the south of India. He was a great warrior and an able administrator. He embraced Buddhism and lived the saintly life of a monk. He had a deep love for his people and always thought and worked for their welfare. He would go on tours to have direct contact with the masses. He was aware of the principles of administration as enunciated in the **Arthshastra** which **Kautilya** had composed during the reign of **Chandragupta Maurya**, the grandfather of **Ashok**. Those rules of administration had not lost their efficacy, but after the war of **Kalinga Ashok**

certain administrative reforms were made, founded on ethical and religious principles, as is evident from the edicts and inscriptions on stone pillars and rocks. Some rock edicts have been discovered at Girnar Hill near Junagadh in the state of Gujrat. Another rock edict has been found in Kalsi in the district of Dehradun in U.P. and the third at Dhauli in the district of Puri (Orissa). The other rocks containing the edicts of **Ashok**, which have so far been discovered, are at Jaugada (Orissa), Shabbazgarhi (Peshawar in Pakistan), Mansehra in Hazara district (Pakistan), Sopara in the Thane district of Maharashtra and Eragudi in Andhra Pradesh. Seven pillar edicts have also been discovered at various places and two separate rock inscriptions have been found in Kalinga at Dhauli. Similarly, some minor pillar edicts and cave inscriptions have also been discovered.

It transpires from these edicts that **Ashok** had placed **Rajukas** or **Lajukas** in charge of districts. They were required to look after the happiness and welfare of the people of the district under their charge. In his rock edict III, **Ashok** had directed his officers to go out on tour for inspection every five years for inculcation of the law of piety and to investigate whether the subordinate officers and officials were not harassing or oppressing the people of the district and were not performing their administrative duties in accordance with the directions of the king. The **Mahamatras** sent out on tour were directed to act

according to the Royal instructions. **Ashok** had noticed that formerly no proper reports were submitted. Hence he had permitted the informants (**Prativedakas**) to see him everywhere and at all times (**vide** rock edict VI) and to submit reports to him. To look after the welfare of his people was his chief duty.

In edict-III, discovered at Dhauri (Orissa), it is inscribed that the Assembly (of followers of the religious instructions inculcated by the touring officers) will direct the **Yukta** officers in the matter of calculation (of all expenses of the touring officials) according to the spirit and text of the Royal rules or decrees. The Ashokan rock edict discovered at Shahbazgarhi (Peshawar) reveals that **Ashok** had appointed **Dharmamahatras** for the establishment of **Dharma** (the law of piety) among all religious sects and for the good and happiness of the **Dharmayuktas** (the officers of lower rank in the Dharma Department). These officers were employed to oversee the counteracting of judicial sentences, freedom from hardship and the release of prisoners on various grounds. The **Dharmamahatras** were also required to see that **Dharmayuktas** were devoted to the law of piety and were given to charity.

In the rock edict discovered at Mansehra (Hazara in Pakistan), **Ashok** is found to have said that although a long time had elapsed, no proper transaction of business or proper report had been made to him. So he had required that at all times,

whether he was eating, in Harem, in the inner chamber, in the cattle-shed, on horseback, in the garden or wherever, the reporters (or informers) should inform him of the people's business, for he regarded the welfare of his people as his chief duty.

In the rock edict found at Dhauri (in the district of Puri in Orissa), **Ashok** had mentioned that the specific purpose for which that edict had been inscribed was to see that the administrators of the town acted always with the intent that no restraint or torture of the people occurred without cause and, for that purpose, he would send out on tour every five years such **Mahamatras** who were not harsh and wrathful but who were honest in action to find out whether the officials were acting in accordance with his instructions and directions and were following the law of piety. He also required his Governors of Ujjaini and Takshila to send such high officials on tour for the said purpose every three years.

There are seven pillar edicts of **Ashok**. In the pillar edict at Delhi, **Ashok** had referred to the importance of the law of piety and his devotion to the same. He had noted that his officers, whether of the highest, middle, or the lowest classes, conformed to his instructions and carried out the administration according to that law.

INFERENCES

- (i) In Ancient India (the period before Christ), the rulers were mindful of the welfare of their people. They were also alive to the fact that the officers appointed by them for the day-to-day administration could be prone to corruption, which generally emanates from greed. Hence the **Dharmashastras**, **Smrities**, **Mahabharat**, **Arthshastra** and **Ashok's** edicts and inscriptions have emphasized that the ruler should vigilantly watch his officers and officials. **Manu** had recommended that the king should go on tours off and on to ascertain whether his officers/officials were corrupt and oppressive and whether the public at large was pleased or displeased. **Shukra** also made the same recommendation. **Ashoka** had stated likewise in his aforementioned rock edicts.
- (ii) The king used to have his own reporters or informers and spies who acted independently of the local officers and who reported directly to him about the conduct and behaviour of the officers. They were also to see that the public fund was not misappropriated or misused. **Kautilya** laid much stress on the role of spies in the general administration. They were called upon to enquire and report, amongst other things, about the officers/officials who were found possessing

wealth incommensurate with their known income or who were spending beyond their means.

(iii) **Ashok** had made himself available at any time and everywhere to his informers and to the aggrieved persons so that justice could be rendered by him with great dispatch. He had directed his highest officers to go on tour every five years to ascertain whether his subjects were being harassed or oppressed by the officers/ officials of the lower rung and to grant relief to the aggrieved/oppressed.

CONCLUSION

To conclude, it may legitimately be inferred that the idea of Ombudsman had not only germinated but had blossomed in ancient India centuries before the Christian era.

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