

# Rise of quasi judicial institutions law constitutional administrative essay

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CHAPTER 3 ' OMBUDSMAN' is a Quasi-Judicial method for resolution of dispute arising in society due to mal-administration of public agencies as well as private under the specific jurisdiction. Pakistan has a large setup of Ombudsman scheme in this regards . However, it need to know its history, to understand about Quasi-Judicial method and Mal-Administration.

## **QUASI-JUDICIAL, BODIES AND ACTIONS**

Quasi-Judicial is prevalent in administrative phrasing. Etymologically, it comprises two Latin words: ' Quam' + ' Si'. ' Quam' which is a Latin words denotes ' as much as' and ' Si' means ' if.' The preface ' Quasi' signifies the meaning " similar to but not exactly the same as." This term originate in literature since 18th century and most effectively in 20thcentury. The Black's Law dictionary defined the Quasi as " Seeming but not actually, resembling or nearby. Quasi is a Latin word frequently used in the civil law and often prefixed to English words. It is not a very definite word. It makes the resemblance and supposes a little difference between two objects, and in legal phraseology the term is used to indicate that one subject resembles another, with which it is compared. In certain characteristics, but that there are also intrinsic and material differences between them. It negatives the idea of identity, but implies a strong superficial analogy, and points out that the conceptions are sufficiently similar one for to be classed as equal of the other." In its continuation the dictionary of Black's Law defined Quasi-Judicial as "" relating to or involving as executive or administrative official's adjudicative acts which are valid if there is no abuse of discretion, often determines the fundamental rights of citizens. They are subject to review by the courts. It has also been distinct that the Quasi-Judicial term is not

definable, Quasi-Judicial belongs to administrative category and is used to cover situation where the administrator is bound by law to observe certain forms and possibly to hold a public hearing."

## **QUASI JUDICIAL PROCEEDINGS**

The Quasi-Judicial method is partial judicial in nature and character having right to hold investigation and hearings disputes apparent violations of procedures and rules and to make recommendations in the general manner of courts but does not act as judiciary and its powers especially in Constitutional Matter. In short, an administrative task is called ' quasi-judicial' when there is responsibility to undertake a judicial style and to observe basic requirements of natural justice. Thus, the ultimate purpose of a quasi-judicial hearing is to deliver the exaggerated parties due process. Due process involves notice of the proceedings and chance to be heard.

## **ELEMENTS OF FAIR QUASI-JUDICIAL PROCEEDING**

The elements of fair Quasi-Judicial proceedings are as follows:-Suitable Notice of allegation Unbiased Hearing Self-representation or though counsel Right to Confront Parties and Witnesses Compulsion for production of evidence Right to have findings of facts and law, and explicit reasons for the decision (speaking order) Judicial Review of Administrative action

## **QUASI JUDICIAL VIS A VIS ADMINISTRATIVE**

The difference is hazy often than not, however its difference is as under:-

## **ADMINISTRATIVE**

## **QUASI-JUDICIAL**

Administrative action issues a license to a body. Quasi-Judicial actions refers its suspension and cancellation. The nature of administrative action is positive in nature. The nature of the action engaged by Quasi-Judicial may be negative and may act adversely upon the person. Administrative authorities act before parties regarding the pure administrative actions. Quasi-Judicial authorities have factors before him and not the parties, one of them plead statute of Government while other effected person, hence justice becomes question before the officer. Administrative decisions are subjective which are based on reality but not on fact and figures. Quasi-Judicial are objective which is unbiased and demonstrable by facts. Administrative action does not obligatory require statutory authority, hence non statutory. Quasi-Judicial body is said so owing to its statutory authority to be function in question. Procedural element is not required by Administrative body as obligation unless imposed by state. Rule of natural justice is obligatory to be observed by Quasi-Judicial body in discharge of its function. Administrative function may be delegated. Quasi-Judicial cannot be delegated. Administrative decisions are subjective which are based on policy and expediency but does not involve any standard at all. Quasi-Judicial decisions are objective and revolve around fixed standards even discretion is exercised with fixed principles. Despite these differences referred above Justice Hedge laid down in A. K. Kraipakvs Union of India " The dividing line between as administrative power and the Quasi-Judicial power is quite thin and is

gradually being obliterated. What was considered as an administrative power some years back is now being considered as a Quasi-Judicial power."

## **RISE OF QUASI JUDICIAL INSTITUTIONS**

The past of Quasi-Judicial institution is hoary. The system to assign certain definite issues to tribunals was an ad hoc measure initially. Tribunals which denotes seat of Justice latterly were established to trial specific issues which warranted technical expertise. Afterwards, the concept of welfare state in early of last century, tribunals were favored to courts due to its flexible, cost effecting and rapid disposal of cases. Later on the introduction Insurance, funds, unemployment benefit and other welfare legislation warranted special institutes and bodies to tackle the conflicts over matters. The courts were already hampered with unresolved litigation. These issues enabled the executives of the state to invoke discretionary powers to solve matters falling within their domain. In India, 42nd Constitutional amendment in 1976 flagged the tribunals and other institutions as a part of Justice System with the insertion of different articles like labour issues, tax, and land modifications etc. Similarly in Pakistani Constitution of 1973 denotes Tribunals as a part of justice system under specific jurisdiction in Article 212, which is as quoted:" 212. Administrative Courts and Tribunals.-(1) Notwithstanding anything hereinbefore contained, the appropriate Legislature may by Act 1[provide for the establishment of] one or more Administrative Courts or Tribunals to exercise exclusive jurisdiction in respect of -(a) matters relating to the terms and conditions of persons 1[who are or have been] in the service of Pakistan, including disciplinary matters; (b) matters relating to claims arising from tortious acts of Government, or

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any person in the service of Pakistan, or of any local or other authority empowered by law to levy any tax or cess and any servant of such authority acting in the discharge of his duties as such servant; or(c) matters relating to the acquisition, administration and disposal of any property which is deemed to be enemy property under any law.(2) Notwithstanding anything hereinbefore contained, where any Administrative Court or Tribunal is established under clause (1), no other Court shall grant an injunction, make any order or entertain any proceedings in respect of any matter to which the jurisdiction of such Administrative Court or Tribunal extends 2[and all proceedings in respect of any such matter which may be pending before such other Court immediately before the establishment of the Administrative Court or Tribunal 3[, other than an appeal pending before the Supreme Court,] shall abate on such establishment:] Provided that the provisions of this clause shall not apply to an Administrative Court or Tribunal established under an Act of a Provincial Assembly unless, at the request of that Assembly made in the form of a resolution, 4[Majlis-e-Shoora (Parliament)] by law extends the provisions to such a Court or Tribunal.(3) An appeal to the Supreme Court from a judgment, decree, order or sentence of an Administrative Court or Tribunal shall lie only if the Supreme Court, being satisfied that the case involves a substantial question of law of public importance, grants leave to appeal." The leading cases under Article 212 of the Constitution of Pakistan are as follows. P L D 1993 KARACHI 107 SHAFIQ HANIF (PVT) LIMITED, KARACHI BANK OF CREDIT AND COMMERCE INTERNATIONAL (OVERSEAS) LIMITED KARACHI 2002 SCMR 1120 SYED YAQOOB SHAHXEN PESCO (WAPDA), PESHAWAR P L D 2002 SC 728 IMDAD

MAGSI AND OTHERS KARACHI WATER AND SEWERAGE BOARD AND OTHERS  
 L D 2004 SC 313 GOVERNMENT OF N. W. F. P THROUGH SECRETARY FOREST  
 DEPARTMENT PESHAWAR MUHAMMAD TUFAIL KHAN P L D 2004 SC 51 SYED  
 ALI SHAH BUKHARI CHIEF SECRETARY, GOVERNMENT OF PUNJAB, LAHORE  
 AND ANOTHER The provisions have been provided separately which indicates  
 that administrative tribunals are not expected to function as court, however  
 these were enacted due to huge pendency and backlog in courts. These  
 were established not only to reduce number of cases in courts but also to  
 facilitate aggrieved person for redress of their grievances rapidly. Some  
 others are: Articles 153-154 of the Constitution of Pakistan, 1973 (Council of  
 Common Interest) Article 156 of the Constitution of Pakistan, 1973 (National  
 Economic Council) Article 160 of the Constitution of Pakistan, 1973 (National  
 Finance Commission) The office of the Ombudsman is one of the  
 institution/body to solve the dispute arising among society in Pakistan under  
 the enacted law by president as " Establishment of the Office of Wafaqi  
 (Federal) Mohtasib (Ombudsman) order, 1983" which will be discussed below  
 in detail.

## **OMBUDSMAN IN GENERAL**

The word " Ombudsman" who is king's representative and an administrative man, originated from Norwegian word. The expansion of Government Bureaucracy, its intervention in different matters, connection between state and citizens and concept of welfare state with increase of rights gave rise to complexity of disputes which require avenues of redress at large. To resolve such disputes several mechanism have been embraced worldwide through which the authorized action can be called in question as the courts were

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the last option, tribunals were of limited jurisdiction and even paralyze to investigate mal-administration which is an umbrella term itself. Concept of Ombudsman relies on administrative law which denotes mechanism to the idea of fair administration and good dealing. Ombudsman as a concept aims to warrant administrative excess and impartial play in exercising administrative powers. The rights of citizen are checked by Ombudsman who is an appointed officer by the state. Cutchin defined the Ombudsman " a respected, apolitical individual outside the bureaucracy who is empowered to investigate citizen's complaints about government services and recommend rectification. Usually he has the power to investigate, criticize, and publicize administrative action, but cannot reverse them."(D A Cutchin to Public Administration, Illinois, 1981, P. 68). Principally it assists aggrieved citizen to make complaint being a victim of mal-administration. The office of the Ombudsman calls for files and evidence upon lodging complaint to investigate administrative action other than found malicious and trivial. Ombudsman is also called legislative commissioner against bureaucratic abuses. Ombudsman is an autonomous and presumably neutral arbitrator between individual and Government. His jurisdiction covers all agencies of government except some other defined specifically; some of the companies also fall in the domain of Ombudsman through special legislation. Most of the countries have a scheme of Ombudsman under vast jurisdiction i. e. Australia, Austria, Belgium, Bermuda, Bulgaria, Canada, Costa Rice, Finland, New Zealand, Norway, Denmark, Sweden, Bangladesh, India, Hong Kong, Uruguay, United States, United Kingdom, Ukraine, Turkey, Thailand, Sri Lanka, Republic of China, Romania, Russia, Philippines, Poland, Peru,



Pakistan, etc. The appointment of Ombudsman is a difficult process to be undertaken as the Encyclopedia Britannica stated " The biggest weakness of the generalized ombudsman is that of selecting a suitable incumbent. If it is an outsider to the institution being checked, they are unlikely to have adequate knowledge too genuinely to assess the merits of a complaint, and if an insider, they are likely to be over-sympathetic to their former colleagues.

## **HISTORY AND CONCEPT OF OMBUDSMAN**

History and literature review reveals that the concept of Ombudsman can be found in religion Islam which presented this seat in state of Madina. The complaints related to infringement of rights were heard by Holy Prophet (PBUH) in court of " Mazalim". The Caliphs of Islam followed the same practice during their period of reign. Mughal emperor during their period practiced accountability through " Chain of Justice" and " Jharoka-e-darshan". The official known as Justitiekansle was created in 17th century to investigate public administration offenses on behalf of Crown. The Islamic ideology of accountability got its birth in 18th century as modern Ombudsman in Sweden. The absolute monarch XII King Charles created HogsteOmbudsmannin in 1713. The present Constitution of 1809 formally recognized the office of the Ombudsman and also gave it independence. Presently for Parliamentary Ombudsman are working in Sweden.

## **PURPOSE OF OMBUDSMAN**

The key work of the ombudsman is resolution of dispute arising among society rapidly, cost free and less formal way. It has been classified as

under:-Redress of GrievanceAdministrative reformsPolicy orientedCost free and rapid disposalImproving relationship between citizen and bureaucracyEnsuring natural JusticeAct as a watchdogNow Ombudsmen are found in government at local, state and federal levels, as well as non-governmental organizations, such as universities, corporations, and nursing homes (Anderson, 1993)

## **OMBUDSMANs AND ITS SCHEME IN PAKISTAN**

The outdated system of administration of Justice verified to be scanty for numerous reasons. An apparatus is now being conceived in many countries to perceive the apathetic attitude of bureaucracy towards the citizens and attempts are also being commenced to correct the inadequacies of public administration. State is answerable to establish mechanism of redress for every citizen at the hands of authorities. The states of majority population try to protect their citizens against oppression and high handedness of administration. Thus several methods have been presented and approved to reform the conduct of administration, hence the establishment of Ombudsman institute in Pakistan is one of the effective methods to overcome such actions. The present organization of accountability through ombudsman is a stunning blend of Islamic " Ehtsab" concept and accountability institution. The ombudsman is also called " Mohtasib" in Pakistan. Initially, office of the Federal Ombudsman was established in 1983 which led the emergence of other institute of Ombudsman having specific jurisdiction. Currently, the scheme of Ombudsman in Pakistan is as follows:-

**FEDERAL OMBUDSMAN (WAFaqI MOHTASIB)**  
**FEDERAL TAX OMBUDSMAN (WAFaqI TAX MOHTASIB)**  
**BANKING OMBUDSMAN (BANKING**

MOHTASIB) FEDERAL INSURANCE OMBUDSMAN (INSURANCE  
MOHTASIB ) FEDERAL OMBUDSPERSON FOR PROTECTION AGAINST  
HARASSMENT OF WOMEN AT WORKPLACE PROVINCIAL OMBUDSMAN  
(MOHTASIB) PUNJAB PROVINCIAL OMBUDSMAN (MOHTASIB)  
SINDH PROVINCIAL OMBUDSMAN (MOHTASIB) BALOCHISTAN PROVINCIAL  
OMBUDSMAN (MOHTASIB) KHYBER PAKHTUNKHWA

## **HISTORY OF OMBUDSMAN JOURNEY IN PAKISTAN**

" In all the countries of the world, where this institution exists, the Ombudsman is considered to be a Parliamentary watchdog operating in administrative domain on behalf of the Parliament, to which alone he is responsible." In Pakistan, establishment of the office of Ombudsman had to go through a great journey. After independence it was expected that original soul of administration will come into being and it was also look forward that such an ethnic spirit would give an alignment to the whole administrative setup for the citizen, their development and democratic process, however prolonged political uncertainty leading to military regimes unavoidably led the rise of strong bureaucracy with rude concentration of vast administrative powers. Hence, people since a long were looking for establishments which ought to put the rulers and bureaucracy on track of decency. Human rights were painted in previous constitution and guaranteed in Constitution of 1973. Meagerness of all accessible institution to provide the proper redress to the victim of mal-administration had been realized since long for the administration of Justice. Numerous steps to overhaul and for the improvement of administrative structure were taken since 1947 to 1973 but all failed to attain required goal. The cause behind the failure was

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dearth of political commitment due to their least interest for reorientation of structure to requirements of people. Secondly, the reformative actions were taken by those who already had been part of administrative structure. After 1st Martial Law in 1958, the " Governor's Inspection Team" was framed to nip the evils of corrupt senior officer but the same could not deal with citizen's grievances. In 1962, establishment of French type administrative Courts was proposed by Justice A. R Conelius. (' REPORT OF THE PAY AND SERVICE COMMISSION', 1962 Chairman of commission Mr. A. RConelious 1969 issued) (' DROIT ADMINISTRATIF' the French administrative system.) ' Vigilance Officers' scheme to check corrupt practices of government departments was hosted in late 60s, however the same was failed due to strong departmentalism. Hassan Habib study group report on ' Toning up' of provincial administration proposed the Ombudsman for the first time in 1969's. (Report of study group on ' Toning up' of provincial administration CHAIRMAN Hassan Habib Government of west Pakistan Lahore Pakistan). The report emphasized the value of ' Swedish Ombudsman and French Administrative System ' in Pakistan with required amendments to strengthen relationship between public servant and aggrieved. The provision of Federal Ombudsman was invoked for the first time in Constitution of 1972(Article 276 of the Interim Constitution of Pakistan 1972) which also narrated the mode of Ombudsman appointment by National Assembly and its functions by Act of Parliament. Successively, the Federal Ombudsman was included as item 13 in ' Federal Legislative list in fourth schedule of 1973 Constitution. In 1973 the elected regime created a body explicitly as ' Prime Minister's Representative for Administrative inspection' with duties comparable to

present Ombudsman. This body proposed Chief Executive of the state for the establishment of Ombudsman in early 1975 but no decision was taken during democratic Government and Martial Law enforced in 5th July 1977. In 1981, when Constitution had been on ice, a draft was released for extracting public opinion by Military regime for the Ombudsman institute. Upon presentation of draft laws the then Majilis-e-Shoora passed it in April 1982 with endorsement for its enactment. The Draft law afterwards in January 1983 was signed by General Zia-Ul-Haq with the title of ' Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 '.

## **ESTABLISHMENT OF THE OFFICE OF FEDERAL OMBUDSMAN**

The Federal Ombudsman was established through President's Order No. 1 of 1983 which determined its name by the virtue of Article 1 as " Establishment of the office of Wafaqi Mohtasib (Ombudsman) order, 1983" and it was extended to whole Pakistan at once. Mr. Justice (retired) Sardar Iqbal had the honor to be first Ombudsman who took his office on 8th August 1983. As the spirit of its birth was to fill the vacuum between government and citizen, so the preamble of the President Order NO. 1 OF 1983 explicit the true spirit and objectives in the words:-" WHEREAS it is expedient to provide for the appointment of the Wafaqi Mohtasib (Ombudsman) to diagnose, investigate, redress and rectify any injustice done to a person through Mal-Administration" The entire spirit of the establishment of this office has been squeezed in Preamble which not only gave message regarding Rule of Law, Administration of Justice but also conveyed its redress if anything gets adverse by Government department. As the office of Ombudsman

investigate complaints against Mal-Administration of the Agencies, hence the word ' Mal-Administration' and ' Agency' have separately been distinct in Definition clauses of Article 2 in the said order to avoid any ambiguity as:-" Agency means Ministry Division Department Commission or office of the Federal Government or statutory body, corporation or other institution established or controlled by the Federal Government The Agency does not include the Supreme Court The Supreme Judicial Council The Federal Shariat Court High Court" The principal obligation of this institute is to investigate into the complaints being treated through Mal-administration which is defined as:-" Mal-administration" includes:(i) a decision, process, recommendation, act of omission or commission which:(a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or(b) is perverse, arbitrary or unreasonable, unjust, biased, Oppressive, or discriminatory; or(c) is based on irrelevant grounds; or(d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and(ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities."

## **APPOINTMENT/OATH AS OMBUDSMAN, ACTING OMBUDSMAN AND ITS TENURE**

As stated in Article 27, Ombudsman falls within the meaning of public servant as referred in Section 21 of Pakistan penal Code (Act XLV of 1860).

Article 3 and 7 of the President Order No. 1 of 1983 states about the appointment as Federal Ombudsman and acting Federal Ombudsman

respectively:-" Article 3 (1) There shall be a Wafaqi Mohtasib (Ombudsman), who shall be appointed by the President.(2) Before entering upon office, the Mohtasib shall take an oath before the President in the form set out in the First Schedule.(3) The Mohtasib shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and independently of the executive; and all executive authorities throughout Pakistan shall act in aid of the Mohtasib" Article 4 of the enactment clearly stated about the tenure of Ombudsman as:-" Tenure of the Mohtasib.— (1) The Mohtasib shall hold office for a period of four years and shall not be eligible for any extension of tenure or reappointment as Mohtasib under any circumstances. Article 9 states about acting Ombudsman in following words" Acting Mohtasib.—At any time when the Office of Mohtasib is vacant, or the Mohtasib is absent or is unable to perform his functions due to any cause, the President shall appoint an acting Mohtasib". The Article 6(2) empowers President to remove Ombudsman from his office, if there is any ground of mis-conduct or mental and physical disability. Ombudsman removed on the charges of mis-conduct ceased his eligibility to contest all types of election and to hold office of profit in any service of Pakistan in terms of Article 6 (4).

## **JURISDICTION OF FEDERAL OMBUDSMAN**

The jurisdiction of federal Ombudsman to investigate any injustice done through " Mal-Administration" has been delimited to Federal Organizations which falls under the demarcation of " Agency" referred in Article 2 (1).

Furthermore Article 9 of the enactment strengthens the Ombudsman to act under its jurisdiction as:-" The Mohtasib may, on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the

National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees:" This said Article also bared Ombudsman to investigate matters which have been ordered to be ceased by the President in exercise of his powers referred under Article 30 (3) of the President Order No. 1 of 1983. The matters and circumstances which have been excluded for operation are as follows:-" Matters which:-(a) are sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or(b) relate to the external affairs of Pakistan or the relations or dealing ofPakistan with any foreign state or government; or(c) relate to, or are connected with the defense of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces". Sub Article 2 also barred Ombudsman to investigate such matters which directly falls within the meaning of " Service", for which Services Tribunals have been established. Furthermore, the complaints made " anonymously or pseudonymously" and made after three month from the date of cause of action are barred to be investigating as per Article 10 (2) and (3) respectively.

## **POWERS OF OMBUDSMAN**

The Ombudsman enjoys full administrative and financial powers in his office, like other Ombudsman of different states, the Federal Ombudsman of Pakistan has always been a super Administrator. If the whole procedure under the law sum up, it will reveal that the Ombudsman is recommendatory



authority to annul and modify decision. During the span of conducting investigation, the Ombudsman enjoys power as are equipped by Civil Court under " Code of Civil Procedure 1908" in following matters:-" summoning and enforcing the attendance of any person and examining him on oath; compelling the production of documents; receiving evidence on affidavits; and issuing commission for the examination of witnesses.(2) The Mohtasib shall have the power to require any person to furnish information on such points or matters as, in the opinion of the Mohtasib, may be useful for, or relevant to, the subject matter of any inspection or investigation." Article 15 of President Order No. 1 of 1983 equips Ombudsman the powers under Code of Criminal Procedure 1898 to search any of the premises where the suspected article, books of account or other material may be found relevant to subject matter under investigation with Ombudsman in following manner:-" Article 15(a) search such premises and inspect any article, book of accounts or other documents;(b) take extract or copies of such books of accounts and documents;(c) impound or seal such articles, books of accounts and documents; and(d) make an inventory of such articles, books of accounts and other documents found in such premises." As it has been verified through the provision of President Order No. 1 of 1983 that all executive authorities shall act in aid to ombudsman during discharge of his function. The Ombudsman is empowered under Article 14 (5), (6) to compel any person for production of documents which may be useful in the process of investigation and if the functionary becomes fail, he may refer the matter to authority for disciplinary action. However, upon making false complaint Ombudsman may grant compensation to person against whom frivolous

complaint was lodged. Furthermore, Ombudsman is equipped with apex power of contempt, mutatis mutandis, as vested by Supreme Court of Pakistan to punish a person. In pursuance of the article 15, every person shall be dealt by contempt proceeding who will:-(a) abuses, interferes with, impedes, imperils, or obstructs the process of the Mohtasib in any way or disobeys any order of the Mohtasib;(b) scandalises the Mohtasib or otherwise does anything which tends to bring the Mohtasib, his staff or nominees or any person authorised by the Mohtasib in relation to his office, into hatred, ridicule or contempt;(c) does anything which tends to prejudice the determination of a matter pending before the Mohtasib; or(d) does any other thing which, by any other law, constitutes contempt of court:" The Ombudsman enjoys the immunity from prosecution and legal proceedings in court of law during discharge of duties under this Order, Courts are also barred to question the validity of any action and to grant injunctions in the matters under instance of Ombudsman.

## **COMPLAINTS PROCEDURE IN THE OFFICE OF OMBUDSMAN**

The Ombudsman acts like a fence against injustice made through Mal-Administration by the Agencies either by:-By aggrieved personReference by the PresidentReference by the Federal CouncilReference by the National AssemblyMotion by the Supreme Court or a High CourtOwn motion (Suo Moto) by OmbudsmanSpecial reference by President under Article 31 of President Order No. 1 of 1983Article 10 (11) empowers Ombudsman to set procedure for conducting investigation and invoking powers. This Article, however restrict Ombudsman to regulate any procedure repugnant to the

provision of whole Order of the President as:-" Save as provided in this order, the Mohtasib shall regulate the procedure for the conduct of business or the exercise of powers under this Order" In exercise of such power, the Ombudsman of the time formed rules of business to regulate business of the office of ombudsman latest in 2003 which was enforced and superseded previous at once, however amended time to time as:-

### **" Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003"**

The Regulation framed by Ombudsman was segregated in 5 Chapters to deal with all procedure, processing, powers and miscellaneous issues. These are as follows:-IntroductionProcedure for registration of complaintsProcedure for processing of complaints by investigating officersProcedure for disposal of complaintMiscellaneous

### **PRESENTATION / FILING OF COMPLAINT**

As the provisions of law clearly speak about the Ombudsman's role regarding investigation in the matters brought before him through any of the way as specified in Order. Other than reference and motion, regulation 3 denotes that an aggrieved person personally or through legal representative may present complaint by any means of communication within the territorial jurisdiction of head office and eight regional offices established by Ombudsman. The complaint procedure has been specified very simply to avoid technicalities unlike judicial system. In order to scrutinize the complaint, ombudsman office formulated an affidavit to be filled by the complainant along-with complaint which contains following provision in term of regulation 3(4)"(a) the allegations contained in the complaint are correct  
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and true to the best of knowledge and belief of the complainant;(b) previously no complaint on the subject was filed at the Head Office or any of the Regional Offices;(c) no suit, appeal, petition or any other judicial proceedings in connection with the subject matter of the complaint is pending before any Court, Tribunal or Board; and(d) a representation to a competent authority of the Agency in respect of the allegations contained in the complaint was made, but either no reply thereto was given within a reasonable time or the representation had unjustly been turned down."

## **REGISTRATION OF COMPLAINT WITH REGISTRAR WING**

Central registry throws the complaint to Registration wing which is headed by Registrar in terms of Regulation 2 (1) (k) which states that " Registrar includes a Deputy Registrar, Assistant Registrar or any other officer assigned the duties of the Registrar", who upon receiving complaint :-i. allot a registration number to the complaint; ii. examine the complaint alongwith the documents attached thereto; iii. analyse the main points of the complaint; iv. enter the main grievance on WMS-Form " B"; andv. forward the complaint for admission or rejection by the Mohtasib or the Authorised Officer. The Authorised Officer, nominated by Ombudsman is empowered to reject or accept the complaint after going through the provisions of President Order No. 1 of 1983 at limine stage. Either of the decision made under such provision shall be communicated to complainant and, if the same gets admitted, that shall be forward to investigation wing within 24 hours.

## **INVESTIGATION WING OF OMBUDSMAN**

As it has already been discussed earlier, that the Ombudsman is Quasi-Judicial institute for provision of Justice so the methods adopted hereby neither complex nor formal, also referred in various provision and clauses of " President Order no. 1 of 1983" and " Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2003". The investigation process has been stream lined under various regulations to avoid delay in any respect. The process is categorized as under

## **REPORT FROM AGENCY CONTAINED ALLEGATION**

The office of the Ombudsman upon admission of complaint calls for a report from the concerned agency through any means of communication containing grievance and allegation made by complainant. (Regulation 5). The report is usually called to be submit within 15 days, however provision of extension exists.

## **REJOINDER AND HEARING OF PARTIES**

The investigation process of the ombudsman is neither exhaustive nor lethargic. It often happen, that the grievance of the complaint stand redress upon making complaint, hence the further proceeding stands closed under relevant disposal clause. Upon contesting nature of complaints, notices for hearing were to be issued by Ombudsman to both the parties i. e. Agency and the complainant for hearing to decide the matter onwards. It has been referred under Regulation 16 (5) that " The hearings shall not be adversarial but in the nature of a conference for ascertaining facts, practice and

procedures of the Agency relevant to the investigation and efforts shall be made to resolve the matter through informal discussion and persuasion."

## **INSPECTION AND VISITATION BY OMBUDSMAN OFFICE**

Sometimes the available record and evidence made by parties remains fail to decide the matter. In this situation Regulation 17 & 19 facilitate the designated officer by the Ombudsman to visit for spot inspection and the agency may also be visited for the quick disposal/settlement of the complaint.

## **DISPOSAL/SETTLEMENT OF COMPLAINTS**

The office of the Ombudsman after going through the facts and evidence disposes off the complaints under disposal clauses. In addition, the matters settled through the negotiation and mutual consent of parties also disposes off under concerned regulation clauses referred in Chapter-iv Regulation 13 which are as follows :-

### **" CHAPTER-IV**

#### **PROCEDURE FOR DISPOSAL OF COMPLAINTS**

23. Completion of Investigation—(1) The investigation of a complaint shall, with the approval of the Mohtasib, be closed when it is found that—(a) the Agency alleged to have committed mal-administration does not specifically fall within the jurisdiction of the Mohtasib; or(b) the Agency is not at fault as a particular procedure has to be adopted or formalities have to be followed by the complainant for redress of his grievance(s); or(c) the complainant fails to furnish the necessary information or supply relevant documents, or does

not respond despite reminders, or fails to attend hearings despite notices and it is not possible to decide the complaint on the basis of the available record; or(d) the relief had already been provided before the complaint was lodged and the complainant confirms the redress of his grievance(s); or(e) the complainant was entitled to relief, or partial relief, and the Agency has accorded this after the complaint was lodged; or(f) the Agency during the hearing of the complaint or its processing undertakes to provide the relief sought; or(g) the complainant is satisfied with the report submitted by the Agency or does not wish to pursue the case any further or withdraws the complaint; or(h) the complainant and the representative of the Agency mutually agree on the redress of the grievance(s) through consent findings; or(i) the subject matter of the complaint does not fall within the purview of P. O. No. 1 of 1983; or(j) the subject matter of the complaint was, or has become, sub-judice before a court of competent jurisdiction, tribunal or board; or(k) the complaint concerns matters relating to the Agency in which the complainant is or has been working and the grievance relates to his service therein; or(l) the complaint is time barred as it was made more than three months from the day on which the complainant first came to know of the matter and there are no special circumstances to condone the delay; or(m) the complaint is premature as the cause of action has not yet arisen; or(n) the complaint does not disclose any cause of action to justify investigation; or(o) the subject matter of the complaint is the same as that already disposed of by earlier findings; or(p) Omitted(q) the complaint involves examination of witnesses, detailed interpretation of laws, rules, regulations or different clauses of contracts and their inter-se relationship for

which the proper forum is a court of competent jurisdiction and not this Office; or(r) the facts of the case are disputed by the parties and to establish the correct position requires a detailed examination of both documentary and oral evidence, and its assessment for which the proper forum is a court of competent jurisdiction and not this Office; or(s) the subject matter of the complaint has already been adjudicated by a Court, Tribunal or a Board of competent jurisdiction; or(t) the complaint is not accompanied by WMS Form " A" or a solemn affirmation prescribed by regulation 3(4) ; or(u) the original findings, in respect of which the implementation petition has been moved, have been set aside by the President in accepting the representation of the Agency under Article 32; or(v) the complaint has been made by a person who is not an aggrieved person; or(w) the complaint is anonymous or pseudonymous; or(x) the Agency is not at fault as the redress of the grievance of the complainant by it has to follow an action to be taken by another Agency to which a Reference for the purpose has been made; or(y) a re-consideration petition filed after the expiry of the time-frame indicated in the findings for implementation of the recommendations, or intimation of reasons for not doing so, in terms of Article 11(2) of P. O. 1 of 1983, and there are no special circumstances to condone the delay, shall be closed as being time-barred; or(z) it warrants closure for a valid reason not covered by any of the preceding clauses.(2) Where a complaint is closed under sub-regulation (1), it may, on sufficient reason being shown by the complainant, be reinvestigated.(3) The complaint shall, on completion of the investigation and with the approval of the Mohtasib, be rejected when it is found that no mal-administration was involved in the case or the complainant is not



entitled to the relief claimed.(4) The complaint shall, on completion of the investigation and with the approval of the Mohtasib, be accepted and recommendations for implementation issued under clause (1) of Article 11 when it is found that the Agency was responsible for mal-administration and injustice to the complainant and such mal-administration or injustice needs rectification."

## **PROVINCIAL OMBUDSMANs OF PAKISTAN**

The offices of the Provincial Ombudsman were set up on the model of Federal Ombudsman from time to time. Sindh was the first province which taken initiative to set up the Provincial Ombudsman and the remaining provinces followed it. The provinces also followed the legislation of Federal Ombudsman with the change of title, replacement of word " Provincial" with " Federal" for its provincial look and applicability in Province and Provincial Agencies. The provinces putative and embraced the legislation as in Federation, hence the status of Provincial Ombudsman in province is same Federal Ombudsman in Federation. The jurisdiction and limitation/restriction of Provincial Ombudsman is upon all provincial agencies as the Federal in Federation. Provincial Ombudsman made regulation also for setting procedure of making complaints and their disposal /settlement. To the extent of contempt the status of Ombudsman has been somewhat different as:-" The Provincial Ombudsman shall have the same powers, mutatis mutandis, as the High Court." However, The Federal Ombudsman shall have same powers, mutatis mutandis, as the Supreme Court has to punish any person for its contemptThe appeal against the decision of Federal Ombudsman lies with President and the appeal against the decision of Provincial Ombudsman

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lies with Governor of respective Province and the Province also replaced the word President with Governor in their legislation. Gradually, Pakistan succeeded to establish Ombudsman scheme with the specific mandate and jurisdiction. This step was taken to maintain check and balance upon, not only in Government sector but also in Semi-Government and Private sector. Besides Federal & provincial Ombudsman, the scheme includes:-

## **FEDERAL TAX OMBUDSMAN**

Beside an exhaustive jurisdiction, the tax related Mal-Administration made by revenue department had been reviewed by Federal Ombudsman for a number of year. The complexity and prompt redress gave birth to the Office of Federal Tax Ombudsman in 2000. The Government of the time took momentous step for its establishment through an Ordinance which is called " Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000".

The Federal Tax Ombudsman comes in action where discrepancies occur and contains vibrant importance in mitigation of the grievances in following situation," Repeated notices, unnecessary attendance or prolonged hearings while deciding cases involving --(a) assessment of income or wealth;(b) determination of liability of tax or duty;(c) classification or valuation of goods;(d) settlement of claims of refund, rebate or duty drawback; or(e) determination of fiscal and tax concessions or exemptions;(ii) willful errors in the determination of refunds, rebates or duty drawbacks; (v) deliberate withholding or non-payment of refunds, rebates or duty drawbacks already determined by the competent authority; (vi) coercive methods of tax recovery in cases where default in payment of tax or duty is not apparent from record; and (vii) avoidance of disciplinary action against an officer or

official whose order of assessment or valuation is held by a competent appellate authority to be vindictive, capricious, biased or patently illegal ."

## **BANKING OMBUDSMAN**

The Banking Ombudsman which is an autonomous organization established under law " BANKING COMPANIES ORDINANCE 1962 (Part - IV Banking Companies Ordinance)" in May 2005. The jurisdiction of Banking Ombudsman has clearly been defined in the legislation as:-(a) enquire into complaints of banking malpractices;(b) perverse, arbitrary or discriminatory actions;(c) violations of banking laws, rules, regulations or guidelines;(d) inordinate delays or inefficiency and(e) corruption, nepotism or other forms or maladministration." The Ombudsman regulates the policy of State Bank in letter and spirit. In this aspect delay, fraudulent withdrawals, import & export services, utility bills, remittance, corrupt motives and dereliction of duty also falls within the jurisdiction of banking Ombudsman. However, loan and assessment matters does not fall in its domain also the matter adjudicated by State Bank and court of law are also barred to be entertain in virtue of enactment.

## **FEDERAL INSURANCE OMBUDSMAN**

The position of the Insurance Ombudsman by the Federal Government is essential under section 125 of the Insurance Ordinance, 2000 with the persistence of quick settlement of the insured. This office protected the interests of policy Holders by making a system of confidence upon the office of Federal Insurance Ombudsman which is an autonomous, neutral grievance redressal body between insurance policyholders and participating

companies. This office of is exclusively functioning since May 2006. The "Section 127, of the Insurance Ordinance, 2000" states the jurisdiction and powers of Insurance Ombudsman which states that , the institution may undertake investigation into Mal-Administration term as referred in Federal Ombudsman i. e. " corruption, nepotism, neglect, inattention, inordinate delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities." FEDERAL OMBUDSPERSON FOR PROTECTION AGAINST HARASSMENT OF WOMEN AT WORKPLACE Harassment of women at workplace Act, 2010 gave birth to Federal Ombudsperson for protection against harassment of women at workplace . This institute was established in January 2011 and for the 1st time the President in exercise of his power under section 7 appointed Musarrat Hilali as Ombudsperson. The spirit and core responsibilities of this institute to protect the women from harassment at work place. The Term " Harassment" has been defined in enactment as:-" means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment The procedure of handling complaints and its disposal is almost same in all Ombudsman scheme.