

**Report
on
The Ombudsman Act, 1980 (Act XV of 1980)**

Chapter I
Introduction

Article 77 of the Constitution provides:- “(1) Parliament may, by law, provide for the establishment of the office of Ombudsman.

(2) 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.

(3) The Ombudsman shall prepare an annual report concerning the discharge of his functions, and such report shall be laid before Parliament.”

Except the above enabling provision, the Constitution is silent. In pursuance of Article 77 Parliament enacted the Ombudsman Act, 1980, (Act XV of 1980).

By a letter under Memo No. Dm (WidwS-5)- 51/99 dated 07-02-99, the Ministry of Law, Justice and Parliamentary Affairs made a reference to the Commission, obviously, under section 6 (Ina) of the Law Commission Act, 1996. The text of the letter of reference runs as follows:-

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msweavtbi 77 Abt?Qf` b`vqcvj Gi c` (Awdm) côZôvnm Avbj w½K wet tq AvBb cÿqtbi weavb AvtQ| ZrtcôñtZ BtZvcfe® The Ombudsman Act, 1980, bvtg GKwU AvBb I cÿxZ ntqtQ| hw` I Dnvi 1 (2) avivi weavb tgvZvteK tMtRU weÁwBi gva`tg KvñKi Kiv nqmb| BtZvgta` b`vqcvj bvgxq côZôvb Z_v AvBbUtK hfMvcthvMx I dj cñyKivi côqvRbxqZv AbfZ nt?Q|

GgZve`vq, Dcwi -D³ j tñ` AvBbwUi tKvb mstkvab, msthvRb côqvRb AvtQ wKbv, Ges_vKtj AvBbMZ mstkvab/msthvRtbi cvkvcwk Ab` wK wK c` tñc tbqv hvq tm wet tq wbtí Rµtg Ri?ix wfwÉtZ AvBb Kwgkbtbi mpcwi k tcô tYi Abtíva Kiv nj |

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The objects of the reference are two-fold, first, to examine whether the Ombudsman Act, 1980, meets the needs of the time and secondly, to examine whether it can be made more effective.

Clause (2) of Article 77 of the Constitution empowers Parliament to vest the Ombudsman with such powers and functions as it may determine including the power to investigate any action taken by a Ministry, a public officer or a statutory public authority. The Ombudsman Act, 1980, empowers the Ombudsman to investigate only such action of a Ministry, a public officer or a statutory public authority as (1) has caused injustice to any person or (2) has resulted in undue favour being shown to any person or (3) has resulted in accrual of undue personal benefit or gain to any person (See section 6). The Ombudsman Act, 1980, does not vest the Ombudsman with any other function.

The Ombudsman Act, 1980, therefore, confines the powers of the Ombudsman to investigate only certain types of action of a Ministry, a public officer or a statutory public authority. Besides these particular types of action specified in section 6 of the Ombudsman Act, 1980, the Ombudsman cannot, under the present Act, investigate into any other matter.

Chapter II

The Need For The Ombudsman

With the ever-increasing complexities of governance, abuse of powers, maladministration, nepotism and corruption by public functionaries have also increased. Every modern democratic state provides conventional constitutional and legal machineries for coping with these evils. These conventional machineries are the judiciary, the legislature, various enquiry commissions set up by the government, etc.

The superior courts are empowered to check maladministration, abuse of powers by public functionaries and infringement of citizens' rights by issuing various types of writs. They are also empowered to quash administrative decisions in certain circumstances. The administration can also be sued in ordinary courts for damages in respect of acts or omissions committed by it. But, it is increasingly felt that the judicial remedy is costly, complicated, time-consuming and is not easily accessible by common people. There are also certain aspects of maladministration and illegal practices which are out of reach of the courts.

The next forum for investigating the grievances of citizens and the evils of modern public administration is the legislature, particularly, in a parliamentary form of government. The legislature exercises control over administration through debates for grants, questions, adjournment motions etc. in parliament. Parliament can also exercise control over various departments of the government through the parliamentary committees set up by it. Our Constitution also empowers Bangladesh Parliament to set up such committees in Article 76. But, the control by parliament also frequently proves illusory in many countries, particularly, where the cabinet form of government prevails. A cabinet having the majority in parliament is all-powerful and is often guided by

party interests. The cabinet often regulates, and, is also regulated by, the members of its own party in parliament as a result of which party interests often operate to vitiate impartiality which is the most important element in every investigation.

Apart from judicial and legislative control over public administration as briefly described above, the government in every modern state appoints various types of commissions of enquiry. These commissions often hold enquiries into executive excesses, negligence on the part of public functionaries and government departments in the performance of public duties, acts of corruption of serious nature, etc. The chief complaints against these commissions of enquiry are that in many cases their reports are not made public and are often consigned to cold storage and their recommendations are not implemented.

Considering the drawbacks of the conventional methods of investigation into various acts and omissions of public functionaries an institution called the Ombudsman has therefore been brought into existence in a number of countries. The experiences of some of these countries are described in the following chapters.

Chapter III **The Swedish Experience**

The Swedish experiment with the idea of Ombudsman is one of the earliest. As back as in 1713 King Charls XII of Sweden introduced the Office of Chancellor of Justice to supervise the government officials as the supreme representative of the King. The most important function of this office was to exercise general supervision in order to ensure that laws and regulations were complied with and public servants discharged their duties properly. This institution took permanent shape and in due course of time was named as the Chancellor of Justice commonly known as the JK. This office received constitutional recognition in Sweden (See Article 27 of the Swedish Constitution of 1809). Another office of Ombudsman called Justitie Ombudsman commonly known as the JO was founded in 1809. Subsequently, unlike the JK, the JO became a parliamentary representative in order to safeguard the civil rights of the citizens. In 1915, a separate Military Ombudsman commonly known as the MO was appointed to supervise the military affairs. In 1968 the offices of the JO and MO were amalgamated and three JOS were appointed from amongst Parliamentary Commissioners for different spheres of supervision. In recent times, six other Ombudsmen for special spheres, namely, the Consumer Ombudsman, the Press Ombudsman, the Equal Opportunities Ombudsman, the Ombudsman against Ethnic Discrimination, the Children's Ombudsman and the Disability Ombudsman were appointed.

The Swedish Ombudsman is a unique institution exercising very extensive jurisdiction. It is empowered to entertain complaints from:-

- (a) a citizen against an official;
- (b) an official against an official;
- (c) a lawyer against a judge;
- (d) the Bar Association against a judge;
- (e) one judge against another judge;
- (f) an organisation on behalf of its members; or
- (g) any one.

The Ombudsman may also initiate investigations *suo motu* without any formal complaint by anyone. About 20 per cent of the complaints are initially weeded out. The Ombudsman himself goes through the incoming complaints. The Ombudsman may recommend various remedies against wrongs committed against the citizens and actions against the wrong-doer including prosecution. The Ombudsman's power over the judges is somewhat unique but interesting. He is not concerned with the contents of the court's decisions but only with the question of whether a judge has been consistently acting illegally. According to Prof. Gellhorn, the Ombudsman can even go to the extent of prosecuting a judge for "the crime of breach of duty" but he cannot overturn his decision. (See Gellhorn, *Ombudsman and Others*, page 237) Many judges and officials seek the Ombudsman's opinion concerning matters of law. Although the system of intervention by the Ombudsman in the conduct of judges may seem to be interference with the independence of the judiciary and rule of law in many countries, in Sweden, in view of the special conditions prevailing there, it has worked without any such complaint and effectively.

In short, the offices of the various Ombudsmen set up in Sweden achieved tremendous success in their respective spheres.

Chapter IV

The Finish Experience

Before 1809 Finland was a part of the realm of Sweden for nearly six centuries. In 1809 it ceded to the Russian Empire which allowed it to retain its own laws and own autonomous administration as a "Grand Duchy". So, it retained the institution of the Chancellor of Justice which it had inherited while it was a part of Sweden and it went on flourishing in Finland. This institution played a leading role as the only Ombudsman in Finland until 1919 when the country adopted a new constitution wherein it found a place and whereby a new office of Ombudsman known as the Parliamentary Ombudsman was created. Thus at present two offices of Ombudsman, the Chancellor of Justice and the Parliamentary Ombudsman are functioning. The former is appointed

and removed by the President and its main duty is to see that the Government observes the laws. The latter is elected by the Parliament by a simple majority for a term of four years and is not removable during the term of his office. The Parliamentary Ombudsman in Finland supervises the activities of the whole body of public officials, the courts, the municipality, the church, the organs of the local government and the public officials. Almost all fields of public activity are within its jurisdiction. It also acts in close co-operation with the Chancellor of Justice.

Chapter V **The Danish Experience**

Inspired by the Swedish experience, Denmark established the institution of Ombudsman in 1955. The first Ombudsman, also known as the Parliamentary Commissioner, took office and began to function in 1955. In Denmark, the Constitution was amended in 1953 to provide for an office of Ombudsman and in pursuance of the amended provision of the Constitution (Article 55 of the Danish Constitution) the Ombudsman Act, 1954, was passed creating the office of the Parliamentary Commissioner. According to this Act, the Ombudsman is elected by the Parliament after every general election. He can be removed by the Parliament alone. The jurisdiction of the Danish Ombudsman extends to civil and military administration and under certain conditions to local government administration. He has power to supervise all governmental administration other than the courts. His jurisdiction extends to ministers, civil servants, and all persons acting in the service of the state except those who are engaged in judicial administration. The “persons who act in the service of the state” are broad enough even to include university teachers, museum curators, clergymen, ballet directors, etc. The powers of the Ombudsman in Denmark are mainly recommendatory but in reality very effective and this institution in Denmark has been proved to be extremely useful. Without curbing the powers and independence of the executive or the judiciary in any way, it has made the administration more efficient, hard-working and accountable. In Denmark, the Ombudsman is treated as the “safety valve” against arbitrariness.

Chapter VI **The Norwegian Experience**

In Norway, the Ombudsman known as the Startingets Ombudsman came into existence in 1963. The Norwegian Ombudsman was appointed in pursuance of the report of an Expert Commission of Administrative Procedure appointed by the King-in-Council to examine the question of appropriate safeguards in the public administration. An Act was passed for establishment of the office of a Parliamentary Ombudsman in 1962 and the Startingets Ombudsman or the Parliamentary Ombudsman was appointed on 1 January, 1963.

In Norway, the Parliament appoints the Ombudsman after each general election for a term of four years. He can be removed by the Parliament by two-third votes during the term of his office. The Ombudsman is independent, even of the Parliament, but, the Parliament is empowered to make general regulations for his activity. The Act confers on the Ombudsman the duty “to endeavour to ensure that the public administration does not commit any injustice against any citizens”. His jurisdiction “covers the government administrative organs and civil servants, government officials and other public servants.” The Ombudsman in Norway can deal with any administrative matters, including municipal administrative matters concerned with the deprivation of personal liberty or right. The Cabinet decisions, the functions of the courts and the functions of the Auditor of Public Accounts are kept out of his jurisdiction. A public servant in Norway can also complain to the Ombudsman if he has grievance against the administration. Unlike the Ombudsman in Sweden, Finland and Denmark, the Norwegian Ombudsman cannot direct a civil servant to be prosecuted or departmentally proceeded against. He can at most say what steps he thinks should be taken. He may also say that a particular decision is invalid or unreasonable. He is required to submit an annual report of his activities to the Parliament. This annual report is widely circulated and is used as an administrative guide.

In Norway, there is also a separate Ombudsman for military affairs. It has been working since 1952. The Military Ombudsman exercises a general supervision to ensure that laws and instructions are observed by all functionaries who are paid out of the defence funds.

Norway has also established Children’s Ombudsman. It was established in 1981. It was established to further the interests of the children in society. The term of office of the Children’s Ombudsman is four years. He has access to all public and private institutions for children. He ensures that all laws protecting the children’s interests are obeyed and proposes measures to promote the welfare and interest of the children.

In Norway, the Ombudsman has contributed to a great extent to safeguard the rights of the citizens against abuses by administration. It is an effective weapon to fight “injustice”.

Chapter VII

The New Zealand Experience

An idea prevailed for many years that the legal and governmental systems in the common law countries being different from those in the Scandinavian countries, the institution of Ombudsman will not succeed in the former. Dispelling this idea, New Zealand successfully adopted the institution for the first time among the common law countries. After deliberations for several years the New Zealand Parliament passed Parliamentary Commissioner (Ombudsman) Act, 1962, for establishment of the office of Ombudsman. In

pursuance of this Act, an Ombudsman was appointed the very same year. This Act was, however, replaced by the Ombudsman Act, 1975, which consolidated and amended the 1962 law. By the subsequent Act material changes were brought in including the extension of the jurisdiction of the Ombudsman and provision for appointment of more than one Ombudsman one of whom was to be the Chief Ombudsman.

In New Zealand, the Ombudsman is appointed by the Governor General (who is the Chief executive) on the recommendation of the Parliament. The appointment is made on the recommendation of each new Parliament whose tenure is three years. So, his tenure is three years but he can be re-appointed. He can be removed by the Governor General only upon an address by the Parliament for disability, bankruptcy, neglect of duty or misconduct.

The Ombudsman in New Zealand is an officer of the Parliament. He has jurisdiction over all officials who are answerable to the Parliament. His jurisdiction extends to matters of administration, acts or omissions of government departments and other specified organisations. He has also jurisdiction to consider the legality behind any act or omission by public authorities. The principal function of the Ombudsman is “to investigate any decision or recommendation made (including any recommendation made to a Minister of the Crown), or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the departments or organisations named in the Schedule to this Act or by any officer, employee, or member thereof in the exercise of any power or function conferred on him by any enactment.” (See section 11 of the Ombudsman Act, 1975). His powers are limited by two conditions. First, he cannot consider the cases of persons who have acted as legal adviser or legal counsel for the Crown in any proceedings. Secondly, he has no jurisdiction over cases in which there is a right of appeal or review by a court or administrative tribunal. In New Zealand, the Ombudsman is also forbidden to investigate cases relating to military affairs. Municipal administration is also left outside the jurisdiction of the Ombudsman.

The function of the New Zealand Ombudsman is only to investigate, report and make recommendations to the Department and the Minister concerned. If his advice is not accepted he may bring the issue to the notice of the Prime Minister and the Parliament. He is also required to submit an annual report of his activities to the Parliament.

The institution has resulted in much improved administration in New Zealand.

Chapter VIII

The English Experience

In the United Kingdom, in 1961, a committee known as the Whyatt Committee, after the name of its director, Sir John Whyatt, was set up “to

enquire into the adequacy of the existing means for investigating complaints against administrative acts or decisions of the government and other public bodies where there is no tribunals or other procedure available for dealing with the complaints, and to consider possible improvements to such means with particular reference to Scandinavian institution known as the Ombudsman”.

Among others, the Whyatt Committee found that in spite of the fact that the British civil service was one of the best civil services in the world, there were complaints against acts of maladministration and these complaints aimed at official misconduct. The Committee then recommended that a new machinery was required to deal with the acts of maladministration and this could best be provided by appointing an officer to investigate the complaints of maladministration and report the result of his investigation to the Parliament. The Committee also suggested that at first his activities should be confined to investigate complaints made by only Members of Parliament, So, a Parliamentary Commissioner for Administration, the Committee suggested, might be set up on the model of the Scandinavian Ombudsman. But, the idea of setting up a Parliamentary Commissioner for Administration was dropped by the then Conservative Government which was in power then and until 1964. The office was created by the Labour Party Government which came to power in October, 1964. The Parliamentary Commissioner for Administration took up office in September, 1966 – even before the Parliament had enacted the enabling Act, the Parliamentary Commissioner Act, 1967. He began his actual work in April, 1967, after the Act had been passed on 22 March, 1967.

At the early stage the institution faced scathing criticism being labelled as ‘lame-dog’, ‘toothless tiger’, ‘swordless crusader’, ‘Ombudsmouse’, etc., but, ultimately, it has been found to be functioning well and successfully.

The Parliamentary Commissioner is appointed by Letters Patent by the Queen. He holds office during good behaviour and until he attains the age of 64 years. He can be removed by addresses by both Houses of Parliament. The main task of the Commissioner is to investigate complaints of citizens who claim to have suffered injustice in consequence of maladministration by government departments in the exercise of their administrative functions. The various departments of the government which are subject to its jurisdiction is listed in a Schedule to the Act. The procedures of entertaining complaints and of investigation are also laid down. Certain matters have been left out of the jurisdiction of the Parliamentary Commissioner. In Great Britain, a citizen does not have the right to address a complaint direct to the Parliamentary Commissioner. He must address the complaint to a Member of Parliament who will refer it to the Commissioner at his discretion with the consent of the complainant. When the investigation is complete, the Commissioner sends the report of investigation to the Member of Parliament from whom the complaint had been received. If the Commissioner considers that injustice was caused he may submit a special report to the Parliament. A copy of the report is also sent to the Permanent Secretary of the department concerned. The Commissioner

has no executive powers and cannot alter a departmental action or decision. He can, however, suggest appropriate remedies. But, a Minister is under a strong obligation to act on the report of the Commissioner. The Commissioner is required to prepare an annual report of his activities and lay the report before the Parliament.

Besides the Parliamentary Commissioner, in Great Britain, the Ombudsman system has been introduced in Local Government and Health Services. Under the Local Government Act, 1972, two Commissioners for local administration for England and Wales respectively and under the National Health Services Reorganisation Act, 1973, two Health Services Commissioners for England and Wales respectively were established.

The establishment of the above offices, after establishment of the Parliamentary Commissioner, shows that these institutions were successful in achieving their objectives.

Chapter IX

The Bangladesh Context

Although the Ombudsman Act, 1980, was passed nearly twenty years ago, no Ombudsman has yet been appointed. In the Act also only “actions” of “public officers” as defined in section 2 of the Act can be investigated by the Ombudsman. The Act also does not seem to include certain important public functionaries such as, ministers, members of parliament, etc. within the ambit of “public officers”. The main deficiency in the Act appears to be that only “action” can be investigated. “Acts of corruption”, “illegal acquisition of property” etc., by public functionaries are outside the jurisdiction of the Ombudsman. The Act was passed by a Presidential form of Government. Subsequently, the Presidential form of Government was replaced by a Westminster type of Parliamentary form of Government. As such, it appears to us that the effectiveness of the Act should be judged in the present context.

In the present scheme of our government the Ministers play the most vital role in shaping administrative policies and in implementing those policies. They are also ultimately responsible to the Parliament for all actions of their respective ministries and departments. In 1980 when the present Act was enacted, the President was the repository of all executive and administrative powers. He was not answerable to the Parliament or anyone for his actions. The Ministers were not responsible to the Parliament but to the President. In such a system the Ministers need not be subject to the jurisdiction of the Ombudsman, because, they did not take administrative decisions which ultimately was the province of the President. With the establishment of responsible government in the country almost all major executive and administrative decisions and actions are taken by the Ministers. The Ministers are responsible to the Parliament. As such, their decisions and actions should, in our view, be subject to scrutiny by

the Ombudsman. So is also the case with the Members of Parliament. As public representatives, they are increasingly being associated with decision-making, actions, development work, implementation of various projects etc., particularly at the local government level. As such, their actions, decisions etc. should also be subject to investigation by the Ombudsman.

It has already been observed that one of the main maladies of public administration ---- corruption in public life-has been kept out of scrutiny by the Ombudsman in the Act. There cannot be any better exposition of how corruption has penetrated into public life and has been destroying it than what the Law Commission of India has said in its “Working Paper Proposing Legislation to Forfeit Property of Corrupt Public Servants”:-

“One of the essential requirements of good governance is the absence of corruption. But unfortunately, corruption has struck deep-roots in our society, including its administrative apparatus. At every rung of the administration, whether at the Centre or in the States, there are corrupt elements who are causing immense loss to the state, to the nation and the public interest. The administrative apparatus of local authorities, public-sector corporations and Government companies has become equally bad. When a public servant is paid bribe of, say, a lakh of rupees, it is paid for the reason that the payer gets at least 10 times the benefit, if not more, and that benefit is the loss of the State and the people. It is not so much the amount of the bribe but the quantum of loss to the people that is more relevant. There is no respect for public money and public funds in the minds of many in the administration; public money is nobody’s money. For a small personal benefit, the corrupt are prepared to cause any amount of loss to the State and to the people. On account of corruption, many of the welfare schemes including schemes for advancement of scheduled tribes and other weaker sections are not able to achieve the intended results. In fact, a former Prime Minister had observed once that only 16% of the funds meant for the welfare of the scheduled tribes reached them and that the remaining 84% was absorbed by the members of the administrative apparatus, politicians and middlemen. A stage has arrived where the corruption is threatening the very security and safety of the State. There is corruption in execution of projects, in awarding contracts, in making purchases, in issuance of licences and permits, in appointments, in elections and so on and so forth. There is hardly any sphere of life left untouched by corruption in our society. The Prevention of Corruption Act has totally failed in checking the corruption. In spite of the fact that India is rated as one of the most corrupt countries in the world, the number of prosecutions- and more so the number of convictions - under the said Act are ridiculously low. A minister or a top public servant is hardly ever prosecuted under the Act and even in the rare event of his being prosecuted, the prosecution hardly ever reaches conclusion. At every stage, there will be revisions and writs to stall and defeat the prosecution. Top lawyers are engaged. Some or other point is raised and the litigation goes on endlessly, thus defeating the true objective of the criminal prosecution. Unfortunately, the courts too have come to attach more sanctity to

procedure..... . Indeed it must be said that criminal justice system in this country has proved totally ineffective particularly against the rich, the influential and the powerful. It is effective, if at all, only against the poor, the destitute and the undefended. We do not, however, think it necessary to stress any further the prevalence and pernicious role of corruption in our body politic as it is an obvious and indisputable fact,”

The situation in Bangladesh is not different from that in India.

We are, therefore, of the view that if acts of corruption of public functionaries are kept out of the jurisdiction of the Ombudsman as in the present Act, this institution will be virtually ineffective and will not be able to meet the expectation of the nation. So, in our view, suitable provisions should be made in the Act in order to enable the Ombudsman to investigate cases of corrupt practice by public functionaries along with cases of maladministration by them.

Now, acts of corruption or corrupt practice can hardly be established in most cases for want of evidence. But corruption almost always manifests itself in providing monetary and proprietary benefits to its perpetrators. As such, if any public functionary is found to be in possession or owning properties himself or through others in excess of his known and lawful source of income, there can be a safe presumption that the said property has been earned by corrupt practice just like the presumption of the presence of fire where there is smoke. Consequently, the Ombudsman should be empowered to investigate whether a public functionary owns or possesses properties in excess of his known and lawful sources of income and law should provide for forfeiture of such illegally acquired properties to the government.

Chapter X **The Act itself**

The Ombudsman Act, 1980, (Act XII of 1980) was enacted by the Parliament with a view to establishing the office of an Ombudsman after the Act is brought into force by the Government by notification in the official Gazette.

There are in all 18 sections in the Act.

Section 1 contains the short title and commencement of the Act.

Section 2 defines (a) “action”, (b) “competent authority,” (c) “public officer” and (d) “prescribed.”

In the light of our discussion, we propose to widen this section by including therein “act of corruption”, “associate”, “illegally acquired property,” and “relative.” We also propose to substitute the term “functionary” for the

term, “officer” and add some more functionaries in the term, “public functionary” than are at present covered by the term, “public officer.”

So, section 2 of the Act may be substituted by the following new section:-

“2. **Definitions.** In this Act, unless there is anything repugnant in the subject or context,-

(a) “**action**” means action taken by way of decision, recommendation or approval or in any other manner and includes failure to act,

(b) “**act of corruption**” means -

- (i) acceptance or obtaining or agreement to accept or attempt to obtain by a public functionary from any person, for himself or for any other person, any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, or
- (ii) acceptance or obtaining or agreement to accept or attempt to obtain by a public functionary for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having connection with the official functions of himself or of any public functionary to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or
- (iii) dishonest or fraudulent misappropriation or otherwise conversion by a public functionary for his own use any property entrusted to him or under his control as a public functionary or allowing any other person so to do; or
- (iv) obtaining or attempt to obtain by a public functionary for himself or for any other person by corrupt or illegal means or by otherwise abusing his position as public functionary any valuable thing or pecuniary advantage; or
- (v) ownership or possession of illegally acquired property by a public functionary himself or through his associates or relatives during his tenure as a public functionary and until five years after he ceases to be a public functionary;

Explanation 1.- The word, “gratification” for the purpose of this clause is not restricted to pecuniary gratification or to gratification estimable in money.

Explanation 2.- The words, “legal remuneration”, for the purpose of this clause are not restricted to remuneration which a public functionary can lawfully demand but include all remuneration which he is permitted by the Government or the statutory public authority which he serves, to accept.

Explanation 3.- Where a person becomes a public functionary more than once the period of five years for the purpose of sub-clause (v) shall be calculated from the date on which he last ceases to be a public functionary.

(c) “**associate**” means-

- (i) any individual who had been or is residing in the residential premises including out-houses of the public functionary;
- (ii) any individual who had been or is managing the affairs or keeping the accounts of the public functionary;
- (iii) any association of persons, body of individuals, partnership firm, or private company within the meaning of the Company’s Act, 1994 (Act XVIII of 1994) of which the public functionary had been or is a member, partner or director;
- (iv) any individual who had been or is a member, partner or director of an association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii) at any time when the public functionary had been or is a member, partner or director of such association, body, partnership firm or private company;
- (v) any persons who had been managing the affairs or keeping the accounts of any association of persons, body of individuals, partnership firm or private company referred to in sub-clause (iii);
- (vi) trustee of a trust where the trust has been created by the public functionary, or, where the value of the assets contributed by the public functionary to the trust amounts, on the date on which the contribution is made, to not less than twenty-five per cent of the value of the assets of the trust on that date;
- (vii) where the Ombudsman, for reasons to be recorded in writing, considers that any properties of the public functionary are held on his behalf by any other person, such other person;

(d) “**competent authority**” means –

- (i) in relation to the Prime Minister, the Speaker and the Deputy Speaker, the President;
- (ii) in relation to a Minister, Minister of State and Deputy Minister, the Prime Minister;

- (iii) in relation to a Member of Parliament, the Speaker;
- (iv) in relation to any other public functionary, the appointing authority or, where there is no such authority, the Government;
- (v) in relation to a Ministry, except where the complaint is against the Minister, the Minister;
- (vi) in relation to a Ministry, where the complaint is against the Minister, the Prime Minister;
- (vii) in relation to a statutory public authority, the Government;

(e) **“illegally acquired property”** means-

- (i) any property acquired by a public functionary, whether before or after the coming into force of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force;
- (ii) any property acquired by a public functionary, whether before or after the coming into force of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any law has been contravened;
- (iii) any property acquired by a public functionary, whether before or after the coming into force of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved;
- (iv) any property acquired by a public functionary, whether before or after the coming into force of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings of such property and includes-

(A) any property held by such person which would have been in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holder is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the coming into force of this Act, for a consideration or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

(e) **“public functionary”** means a person holding or acting in any office of emolument in the affairs of the Republic or any statutory public authority and includes-

- (i) a “public officer” as defined in the Code of Civil Procedure, 1908.
- (ii) a chairman, mayor, director, member, trustee, officer or other employee of a statutory public authority or of any other authority, corporation, body or organisation established, owned, managed or controlled by the Government;
- (iii) a Member of Parliament; and
- (iv) the Prime Minister, a Minister, a Minister of State or a Deputy Minister.
but shall not include
the President.

(f) **“relative”** means-

- (i) spouse of the public functionary;
 - (ii) brother or sister of the public functionary;
 - (iii) brother or sister of the spouse of the public functionary;
 - (iv) any lineal ascendant or descendant of the public functionary;
 - (v) any lineal ascendant or descendant of the spouse of the public functionary;
 - (vi) spouse of the person referred to in sub-clauses (ii) to (v);
 - (vii) any lineal descendant of the person referred to in sub-clause (ii) or sub-clause (iii);
- (g) **“prescribed”** means prescribed by rules made under this Act.”

Sections 3, 4 and 5 of the Act are respectively provisions relating to the establishment of the office of Ombudsman, the term of the office of Ombudsman and the remuneration, etc., of the Ombudsman. There is no provision in the Act debarring the Ombudsman from holding any other office of profit or any other office in the service of the Republic during the tenure of his office as Ombudsman or after he ceases to hold office as Ombudsman. A provision to this effect is necessary in order to guarantee his independence from inducement or influence. A such, we propose the following sub-section in section 4 of the Act:-

“(4) The Ombudsman shall not-

- (a) hold any other office of profit or emolument in the service of the republic; or

- (b) hold any other office, post or position of profit or emolument; or
- (c) take any part in the management or conduct of any company, association or body having profit or gain as its object; or
- (d) be eligible for election as a member of Parliament or any local body.

(5) The Ombudsman shall not hold any office, post or position of profit or emolument in the service of the Republic after he has ceased to hold office as Ombudsman.”

Section 3 and 5 may remain as they are.

Section 6 of the Act defines the functions of the Ombudsman. In the light of our discussion above this section is required to be recast and we propose this section as follows:-

“6. Functions of Ombudsman.- (i) The Ombudsman may investigate any action taken by a Ministry, a statutory public authority or a public functionary, or an act of corruption by a public functionary in any case where-

(a) a complaint in respect of such action or act of corruption is made to him by a person

- (i) who claims to have sustained injustice in consequence of such action or act of corruption; or
- (ii) who affirms that such action or act of corruption has resulted in favour being unduly shown to any person or in accrual of undue personal benefit or gain to any person; or

(b) information has been received by him from any person or source, otherwise than on a complaint, that such action as has been mentioned in clause (a) or an act of corruption has occurred.

(2) Nothing in this section shall authorise the Ombudsman to investigate any civil, criminal or other proceeding pending before any court or tribunal constituted under any law for the time being in force or the function performed by, or the conduct of, a person while acting in the discharge of his duties as a member of such court or tribunal.”

Section 7 of the Act lays down the procedure for investigation. This section may remain as it is except that the words, “public officer”, wherever occurring, may be substituted by the words, “public functionary” and in sub-section (4), after the words, “where any action” and the words, “shall not investigate such action”, the words, “or act of corruption,” may be added.

Section 8 of the Act relates to evidence in an investigation by the Ombudsman. This section needs no change except that the words, “public officer”, occurring therein may be substituted by the words, “public functionary” and addition of an item in sub-section (2) of section 8 as follows:-

“requiring a public functionary to submit statement of his properties, assets, liabilities, income and expenditure”.

So, sub-section (2) of section 8 may be re-written as follows:-

“(2) For the purposes of any such investigation the Ombudsman shall have the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (V of 1908), in respect of the following matters, namely:-

- (a) requiring a public functionary to submit statement of his properties, assets, liabilities, income and expenditure;
- (b) summoning and enforcing the attendance of any person and examining him on oath;
- (c) requiring the discovery and production of any document;
- (d) requiring evidence on affidavit;
- (e) requisitioning any public record or a copy thereof from any court or office;
- (f) issuing commissions for the examination of witnesses or documents;
- (g) such other matters as may be prescribed.”

Section 9 of the Act provides for submission of report by the Ombudsman after completing investigation and also preparation and submission of annual report of its activities. We propose a new sub-section as sub-section (4) after sub-section (3) and re-numbering of sub-sections (4), (5), (6) and (7) as sub-sections (5), (6), (7) and (8) respectively. The new sub-section (4) of section 9 may run as follows:-

“(4) If, after investigation of any case of act of corruption by any public functionary, it appears to the Ombudsman that such public functionary has committed an act of corruption, he shall, by a report in writing, communicate his findings, together with the relevant documents, materials and other evidence, to the competent authority and recommend such legal, departmental or disciplinary action against the public functionary concerned as he may deem fit.”

Sub-section (4) may be re-numbered as sub-section (5) and after the words, “sub-section (3)” the words, “and sub-section (4)” may be inserted.

Sub-section (5) may similarly be re-numbered as sub-section (6) and in this sub-section after the words, “sub-sections (1),” the words, “(3) and (4)” shall be inserted and the words, “and (3)” shall be omitted.

Sub-sections (6) and (7) may be re-numbered as sub-sections (7) and (8) respectively.

Sections 10 to 14 of the Act make provisions for staff of the Ombudsman and some powers of the Ombudsman in connection with his main function of investigation. These may remain as they are.

Section 15 of the Act is important. It empowers the Government to exempt any public functionary or class of public functionaries from the operation of the Ombudsman Act. This is an enormous power and exercise of this power by the executive organ of the State is likely to make the office of Ombudsman largely ineffective and turn the Ombudsman into a toothless tiger. It should be remembered that when the Act was passed, there was a presidential form of government with concentration of all powers in the executive organ of the State and the Executive was not responsible to the Parliament. The Ombudsman is mainly a watchdog responsible to the Parliament for watching executive action and for preventing and rectifying maladministration. As such, if the Executive is vested with the power of exemption as provided in section 15 of the Act, the object of establishing the office of Ombudsman will be largely frustrated. Since the Ombudsman is a creature of the Parliament and is responsible to the Parliament, this power of granting exemption, if any and if at all, should remain with the Parliament. As in our view this power should be exercised in exceptional circumstances and very sparingly, we propose to substitute this section by the following section in order to leave the power of exemption to the wisdom of the Parliament:-

“15. **Exemption:** Parliament may, by law, exempt any Ministry, statutory public authority, public functionary or class of public functionaries from the operation of all or any of the provisions of this Act.

Sections 16, 17 and 18 provide for immunities, rule-making power and savings respectively. They need no change.

(Justice Naimuddin Ahmed)
Member.

(Justice Kemal Uddin Hossain)
Chairman.

Report on Forfeiture of Illegally Acquired Properties of Public Functionaries

Introduction

An effective law for curbing and preventing corrupt practice by all categories of public functionaries has become the crying need in this country. We have the Prevention of Corruption Act, 1947, the Criminal Law Amendment Act, 1958 and the Anti-Corruption Act, 1957, in our Statute Book. But, these enactments have signally failed to check corrupt practice by public functionaries. Under these Acts the number of prosecutions and more so, the number of convictions are ridiculously low compared to the enormity of corrupt practice among public servants. A top public servant is hardly ever prosecuted under the above Acts and even in the rare event of being prosecuted, the prosecution hardly ever reaches conclusion because of innumerable procedural obstacles intentionally created by the accused. Such litigations are dragged on endlessly often defeating the object of criminal prosecution and the end results of the prosecutions of powerful public servants are that they come out scot-free becoming more powerful and more desperate. Corruption has taken deep roots in our society and has spread like a hydra. There is corruption in execution of projects, in awarding contracts, in making purchases, in issuing licences and permits, in making appointments, in election to various bodies and so on and so forth. It is needless to stress any further the prevalence of the pernicious role of corruption in our body politic and the failure of the existing anti-corruption laws to cope with it.

The need for a law of forfeiture

In the Criminal Law Amendment Act, 1958, provision has been made for confiscation of the whole or any part of the property of an accused in the event of his conviction. (See section 9 of the Criminal Law Amendment Act, 1958). Cases of conviction under this Act read with the other two Acts already mentioned above are rare and cases of confiscation of property by applying this Act are rarest. In fact, sending a corrupt public official who has accumulated huge property by indulging in corrupt practice to jail is not a remedy and has failed to curb corrupt practice. It is, therefore, felt that there must be a law to deprive the corrupt public officials of their ill-gotten assets. Otherwise, the canker of corruption cannot possibly be tackled. The same opinion was expressed in a recent case by the Supreme Court of India in the following words:- “..... law providing for forfeiture of properties acquired by holders of ‘public offices’ (including the offices/posts in the public sector corporations) by indulging in corrupt and illegal acts and deals, is a crying necessity in the present state of our society. The law must extend not only toproperties acquired in the name of the holder of such property but also to properties held in the names of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts, all such properties should be attached forthwith. The law should

place the burden of proving that the attached properties were not acquired with the aid of monies/properties received in the course of corrupt deals upon the holder of that property..... Such a law has become an absolute necessity, if the canker of corruption is not to prove the death-knell of this nation.....It is for the Parliament to act in this matter, if they really mean business.” (Delhi Development Authority vs. Skipper Construction Co. (Private) Limited, AIR 1996 AC 2005).

There cannot be any better justification for a law of forfeiture of properties of public functionaries illegally acquired than what has been stated above.

Features of the proposed law

In the working paper on amendment of the Ombudsman Act, 1980, we have observed that the Act is ineffective and insufficient in as much as the Ombudsman has been empowered only to enquire into and investigate “action” of public functionaries and not “acts of corruption” committed by them and as such, we have proposed amendment to the Ombudsman Act, 1980, for empowering the Ombudsman to investigate acts of corruption committed by public functionaries. In the definition of “act of corruption” in the said Act, we have proposed that “act of corruption” by a public functionary shall include ownership or possession of “illegally acquired property” which has also been defined in the Act. In the Ombudsman Act, 1980, the Ombudsman’s power is limited to undertaking investigation, recording findings, preparing a report on the basis of the findings and submitting the report to the appropriate authority for taking action according to law. Various laws are in existence and under these laws the appropriate authority may take various actions against a public functionary on the basis of the report of the Ombudsman. Such actions may include criminal prosecutions, departmental actions, etc. But, there is no effective and comprehensive law for forfeiture of illegally acquired property owned or possessed by a public functionary. As such, we propose that a law of forfeiture may be enacted as a supplementary to the Ombudsman Act, 1980, in order to meet the deficiency and as a measure for curbing corruption from public life.

The broad principles on which the law should be based are shortly as follows:-

- (1) Compulsory initiation of proceedings by the appropriate authority for forfeiture of illegally acquired property owned or possessed by a public functionary as soon as a report is submitted by the Ombudsman to this effect;
- (2) Creation of a forum where the proceeding shall lie;
- (3) Power and functions of the forum;

- (4) Procedure to be followed by the forum for quick disposal of the proceeding, at the same time, providing the affected person adequate opportunity of being heard; and
- (5) Provision for an appellate forum.

The Law Commission has, accordingly, prepared a draft of the proposed enactment embodying the above principles. It is appended with this report.

The Corrupt Public Functionaries' (Forfeiture of Property) Act, 2000.

Section 1. Short title, extent and commencement.- (1) This Act may be called the Corrupt Public Functionaries' (Forfeiture of Property) Act, 2000.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint but such date shall not be more than six months from the date on which the President assents to the Bill.

Section 2. Definitions.- In this Act, unless there is anything repugnant or contrary in the subject or context,—

- (a) “**act of corruption**” has the same meaning as in the Ombudsman Act, 1980 (Act No. XV of 1980);
- (b) “**associate**” has the same meaning as in the Ombudsman Act, 1980 (Act No. XV of 1980);
- (c) “**competent authority**” has the same meaning as in the Ombudsman Act, 1980 (Act No. XV of 1980);
- (d) “**illegally acquired property**” has the same meaning as in the Ombudsman Act, 1980 (Act No. XV of 1980);
- (e) “**Ombudsman**” has the same meaning as in the Ombudsman Act, 1980, (Act No. XV of 1980);
- (f) “**prescribed**” means prescribed by rules made under this Act;
- (g) “**proceeding**” means a proceeding before a tribunal under this Act;
- (h) “**property**” includes cash, jewellery, or any article of value and any interest in property, movable or immovable;
- (i) “**public functionary**” has the same meaning as in the Ombudsman Act, 1980 (Act No. XV of 1980);

(j) **“relative”** has the same meaning as in the Ombudsman Act, 1980 (Act No. XV of 1980); and

(k) **“tribunal”** means a tribunal constituted under this Act.

Section 3. Tribunal.- A District Judge shall be ex-officio tribunal to exercise all powers and functions under this Act within his territorial jurisdiction.

Section 4. Jurisdiction.- (1) A tribunal within whose territorial jurisdiction the illegally acquired property is situate shall have jurisdiction to take proceeding under this Act.

(2) Where the illegally acquired property is situate within the territorial jurisdiction of more than one tribunal, any one of such tribunals shall have jurisdiction to take proceeding under this Act.

Section 5. Application.- This Act shall apply to every public functionary, his associates and relatives.

Section 6. Prohibition on holding illegally acquired property.- (1) With effect from the commencement of this Act, it shall not be lawful-

- (a) for any person to whom this Act applies to hold any illegally acquired property;
- (b) for any person to whom this Act does not apply to hold any illegally acquired property knowing or having reason to believe that such property is illegally acquired property.

Explanation: For the purpose of this clause the onus of proving that he had no knowledge or had no reason to believe that the property in question was illegally acquired property shall always be on the person who holds such property.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, a person holding any illegally acquired property in contravention of the provisions of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to fourteen years and shall not be less than seven years and shall also be liable to fine.

(3) An offence under sub-section (2) shall be a cognizable offence and shall be triable by a Court of Sessions.

Section.7 Forfeiture of illegally acquired property.- Where any public functionary holds any illegally acquired property by himself or through his associate or relative in contravention of sub-section (1) of section 6 of this Act,

such property shall, notwithstanding any other provisions of this Act or any other law for the time being in force, be forfeited to the Government in accordance with the provisions of this Act.

Section 8. Competent authority to report to tribunal.- (1) If, after completing any investigation the Ombudsman submits a report to the competent authority under section 9 of the Ombudsman Act, 1980, stating that a public functionary has committed an act of corruption within the meaning of sub-clause (v) of clause (b) of section 2 of the Ombudsman Act, 1980, (Act XV of 1980), such competent authority shall forthwith report the matter to the tribunal with a request to take proceeding for forfeiture of the illegally acquired property according to the provisions of this Act.

(2) A report under sub-section (1) to the tribunal shall be accompanied with a copy of the report of the Ombudsman and other relevant documents.

Section 9. Power of tribunal to call for information.- (1) On receipt of a report from the competent authority under section 8, the tribunal shall serve a notice on the public functionary calling upon him to disclose, by affidavit, a true, full and up-to-date list of properties held by him or in his possession and also those held by or in possession of his associates or relatives.

(2) Any person furnishing false information or any person refusing or intentionally failing to furnish information in response to a notice under sub-section (1) shall be punished with imprisonment of either description for a term which may extend to two years or fine or both.

(3) An offence under sub-section (2) shall be a cognizable offence and shall be triable by a Metropolitan Magistrate or a Magistrate of the First Class.

Section 10. Notice of Forfeiture.- (1) If, having regard to the value of the properties held by a public functionary either by himself or through his associates or relatives on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of any action, enquiry or investigation taken under this Act or otherwise, the tribunal is satisfied for reasons to be recorded in writing, that all or any of such properties are illegally acquired properties, it shall serve a notice upon such public functionary calling upon him to show cause within a specified time which shall not be less than thirty days to furnish the details of sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such properties, as the case may be, shall not be declared to be illegally acquired properties and forfeited to the Government under the provisions of this Act.

(2) Where a notice under sub-section (1) to any public functionary specifies any property as being held by any associates or relatives on behalf of such public functionary, a copy of the notice shall also be served on such associates or relatives.

Section 11. Forfeiture of property.- (1) The tribunal may, after considering the explanation submitted by the public functionary, his associates or relatives, if any, in response to a notice under section 10 and holding such enquiry in accordance with the provisions of this Act or otherwise, as it may deem fit, record a finding by order whether all or any of the properties in question are illegally acquired properties.

(2) No order under sub-section (1) shall be made without affording the public functionary, his associates or relatives concerned a reasonable opportunity of being heard.

(3) Where the tribunal is satisfied that some of the properties mentioned in the notice under section 10 are illegally acquired properties but cannot specifically identify such properties, it shall be sufficient for the tribunal to specify the properties which, to the best of its judgement, are illegally acquired properties and record a finding to that effect under sub-section (1).

(4) Where the tribunal records a finding under sub-section (1) or sub-section (3) to the effect that any property is illegally acquired property, it shall direct that such illegally acquired property be forfeited to the Government free from all encumbrances,

(5) With effect from an order under sub-section (4) in respect of any property, such property shall vest in the Government free from all encumbrances.

(6) Where any shares in a company vest in the Government under sub-section (5), such company shall, notwithstanding anything in the Companies Act, 1994, or the articles of association of such company, forthwith register the Government as the transferee of such shares.

Section 12. Procedure in relation to certain trust properties.- In the case of any person referred to in sub-clause (vi) of clause (c) of section 2 of the Ombudsman Act, 1980, if on the basis of the report of the competent authority submitted to it under section 8 and any other materials available to it, if any, the tribunal is satisfied for reasons to be recorded in writing that any property held in trust is illegally acquired property, it shall serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of which or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not be less than thirty days from the date of service thereof, to

explain the source of the money or other assets out of or by means of which such property was acquired or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 10 and all the other provisions of the Act shall apply accordingly.

Explanation: For the purposes of this section, “illegally acquired property” in relation to any property held in trust includes-

- (i) any property which if it had continued to be held by the author of the trust or the contributor of such property to the trust would have been illegally acquired property in relation to such author or contributor;
- (ii) any property acquired by the trust out of any contribution made by any person which would have been illegally acquired property in relation to such person if such person had acquired such property out of such contribution.

Section 13. Certain transfers to be void.- Where, after the issue of the notice under section 10 or under section 12, any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, notwithstanding anything contained in any other law for the time being in force, have no effect for the purposes of the proceedings under this Act and if such property is ultimately forfeited to the Government, such transfer of such property shall be deemed to be null and void.

Section 14. Appeal.- (1) An appeal shall lie to the High Court Division against an order passed by the tribunal under section 11 or under section 12.

(2) No appeal under sub-section (1) shall be admitted unless it is filed within ninety days from the date of the order of the tribunal appealed against:

Provided that the High Court Division may entertain an appeal filed after the expiry of ninety days from the date of the order of the tribunal if it is satisfied that the appellant was prevented by sufficient cause from not preferring the appeal within the time prescribed by this sub-section.

(3) The period required for obtaining a copy of the order passed by the tribunal shall be excluded for the purpose of computing the period of limitation under this section.

(4) Except as provided in this section no appeal or revision shall lie against any order of the tribunal.

Section 15. Bar of jurisdiction. - No civil court shall have jurisdiction in respect of any matter which the High Court Division or the tribunal is empowered by or under this Act to determine, and no injunction or prohibitory order shall be granted by any Civil Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 16. Tribunal to have powers of civil court.- The tribunal shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) requiring evidence on affidavit;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for examination of witnesses or documents;
- (f) any other matter which may be prescribed.

(2) The tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and every proceeding before the tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Penal Code, 1860, and for the purposes of section 196 of the Penal Code, 1860.

Section 17. Information to tribunal.- (1) Notwithstanding anything contained in any other law for the time being in force, the tribunal shall have power to require any officer or authority of the Government or a local authority to furnish information in relation to such persons, points or matters as in the opinion of the tribunal will be useful for, or relevant to, the purposes of this Act.

(2) Any officer of the Government or of a local authority may furnish suo motu any information available with him to the tribunal if, in the opinion of the officer, such information will be useful to the tribunal for the purposes of this Act.

Section 18. Power of the tribunal to require certain officers to exercise certain powers.- (1) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the tribunal shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of accounts or any other relevant matters.

(2) For the purposes referred to in sub-section (1), the tribunal may, having regard to the nature of the inquiry, investigation or survey, require any officer of such Department of the Government as it may think fit, to conduct or cause to be conducted such inquiry, investigation or survey.

(3) If any officer of the Income-tax Department is required to conduct or cause to be conducted any inquiry, investigation or survey required to be conducted under this section such officer may, for the purpose of such inquiry, investigation or survey exercise any power, including the power to authorise the exercise of any power, which may be exercised by him for any purpose under the Income-tax Ordinance, 1984, and the provisions of the said Ordinance shall, so far as may be applicable, apply accordingly.

Section 19. Power to take possession.- (1) Where any property has been forfeited to the Government under this Act, the tribunal may order the public functionary concerned and any other person who may be in possession of the property, to surrender or deliver possession thereof to any person or authority as may be prescribed.

(2) If any person fails to comply with the order made under sub-section (1) within thirty days from the date of service of the order on him, the tribunal may cause delivery of possession thereof and may use such force as may be necessary for the purpose.

(3) For the purpose of causing delivery of possession under sub-section (2) the tribunal may requisition the service of any police officer or police force to assist it and it shall be the duty of such police officer or police force to comply with such requisition and provide the necessary assistance.

Section 20. Correction of errors, etc.- (1) The tribunal or the High Court Division may, with a view to correct or rectify any error or mistake apparent on the face of the record, amend, rescind or modify any order within a period of one year from the date of the order.

(2) No order under sub-section (1) shall be made without notice on the person or persons affected thereby and without affording such person or persons a reasonable opportunity of being heard.

Section 21. Findings under other laws not conclusive for proceedings under this law.- The findings of any officer or authority under any other law shall not be conclusive for the purposes of any proceedings under this Act.

Section 22. Service of notices and orders under the Act.- (1) Any notice or order issued or made under this Act shall be served -

- (a) by tendering the notice or order to the person for whom it is intended; or
- (b) by tendering the notice or order to the authorised agent of the person for whom it is intended; or
- (c) by sending the notice or order by registered post with acknowledgement due to the person for whom it is intended; or
- (d) by sending the notice or order by registered post to the authorised agent of the person for whom it is intended.

(2) If the notice or order cannot be served in the manner provided in sub-section (1) it may be served-

- (a) by affixing it on a conspicuous part of the property in relation to which the notice or order is issued or made; or
- (b) by affixing it on any conspicuous part of the premises in which the person for whom it is intended resides or carries on business or works for gain; or
- (c) by affixing it on any conspicuous part of the premises in which the person for whom it is intended is known to have last resided or carried on business or worked for gain.

Section 23. Immunities.- (1) No suit, prosecution or other legal proceeding shall lie against the Government or any officer of the Government for anything which is in good faith done or intended to be done under this Act or under the rules made under this Act.

(2) Except as provided in this Act, no proceeding, decision or order of the tribunal shall be called in question, challenged, reviewed or quashed in any court.

Section 24. Overriding effect of the Act.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force.

Section 25. Act not to apply to certain properties held in trust.- Nothing contained in this Act shall apply in relation to any property held by a trust or an institution created or established wholly for public, religious or charitable purpose, if-

- (a) such property has been so held by such trust or institution from a date prior to the commencement of this Act; or
- (b) such property is wholly traceable to any property held by such trust or institution prior to the commencement of this Act.

Section 26. Power to make rules.- The Government may, by notification in the official Gazette, make rules to carry out the provisions of this Act.

Section 27. Savings.- The provisions of this Act shall be in addition to the provisions of the Prevention of Corruption of Act, 1947, the Criminal Law Amendment Act, 1958 and the Anti-Corruption Act, 1957, and any proceeding taken under the said enactments shall not preclude the tribunal from taking any action or initiate any proceeding under this Act.

(Justice Naimuddin Ahmed)
Member.

(Justice Kemal Uddin Hossain)
Chairman.

GOVERNMENT OF THE PEOPLES REPUBLIC OF BANGLADESH

THE LAW COMMISSION

-Subjects-

A COMPLETE REPORT BY THE LAW COMMISSION ON THE OMBUDSMAN ACT, 1980 (ACT XV OF 1980) RECOMMENDING SOME AMMENDMENTS TO THE EXISTING OMBUDSMAN ACT, 1980 AND ANOTHER REPORT ON THE LAW RELATING TO FORFEITURE OF ILLEGALLY ACQUIRED PROPERTIES OF PUBLIC FUNCTIONARIES TERMED AS THE CORRUPT PUBLIC FUNCTIONARIES (FORFEITURE OF PROPERTY) ACT, 2000 WHICH IS AN ENACTMENT SUPPLEMENTARY TO THE OMBUDSMAN ACT, 1980

OFFICE OF THE LAW COMMISSION
OLD HIGH COURT BUILDING
DHAKA-1000

09 JULY, 2000

Preface

On a reference from the Government for reviewing the Ombudsman Act, 1980 (Act XV of 1980) in order to examine whether the law is required to be updated and made more effective, the Law Commission took up the work of reviewing the Ombudsman Act 1980. Accordingly, a working paper was prepared on 09.12.1999 proposing some amendments to the existing Act and circulated among cross section of the people including Members of Parliament, Lawyers, various Bar Associations of the country, the Ministries of the Government of Bangladesh including the President's Secretariat, the Prime Minister's Secretariat, the Parliament Secretariat, Academics, Law Teachers, Judges, Journalists, Chambers of Commerce etc. Along with the working paper on the Ombudsman Act, 1980, another working paper on a proposed enactment for Forfeiture of Illegally Acquired Properties of Public Functionaries was also prepared and circulated along with the Ombudsman Act 1980 for opinion and suggestions.

In response to the Commission's request, written suggestions were received from various quarters. These were duly considered by the Commission in more than one meeting. The Commission also received requests from various organizations, political parties, lawyers, political leaders, journalists, etc, for open discussion and accordingly, interviews were arranged at the office of the Law Commission to hear them. In this connection, it may be mentioned that the Commission heard Messers Sheikh Shahidul Islam, Sadek Siddique, Nuresh Maksud, Advocate and Nurul Islam, Advocate of Jatiya Party, Abdul Mannan, Advocate and Shahara Khatoun, Advocate of Bangladesh Awami League, Khondakar Mahbubuddin Ahmed, Advocate, Aminul Huq, Bar-at-Law, Shamsul Alam and Khondakar Delwar Hossain, Advocate of Bangladesh Nationalist Party, Rafiqul Huq, Bar-at-Law, Justice Md. Badruzzaman, Director General of JATI, Iqram Ahmed, Director (Law) of the Prime Minister's Secretariat, Tajul Islam, Deputy Secretary of the Ministry of Food, Lt. Colonel Noor Mohammad, Deputy Secretary (Law) and Md. Ali Mostafa Chowdhury, Senior Assistant Secretary of the Ministry of Defence, Harun-ur-Rashid, Law Officer and Abdul Hai Chowdhury, Senior Assistant Secretary of the Parliament Secretariat, Fazila Begum, Senior Assistant Secretary of the Ministry of Local Government and Rural Development and Nurul Kabir, Journalist of the Daily Star Newspaper. They suggested various proposals for improvement. The Law Commission takes this opportunity of recording its deep appreciation for the assistance rendered by them and extends its thanks to all of them for the valuable suggestions made by them.

The report on the proposed amendments to the Ombudsman Act, 1980 and the report on the law regarding forfeiture of illegally acquired properties of public functionaries termed as the Corrupt Public Functionaries (Forfeiture of Property) Act, 2000 which is an enactment virtually supplementary to the Ombudsman Act, 1980 are prepared together.

July 09, 2000

(Ikhtedar Ahmed)
Secretary
Law Commission

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