

THE OMBUDSMAN ACT, 1980**CONTENTS**

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THE OMBUDSMAN ACT, 1980

ACT NO. XV OF 1980

[9th April, 1980]

An Act to provide for the establishment of the office of Ombudsman and to define his powers and functions.

WHEREAS it is expedient to provide for the establishment of the office of Ombudsman and to define his powers and functions and to provide for matters connected therewith;

It is hereby enacted as follows:-

Short title and commencement

1. (1) This Act may be called the Ombudsman Act, 1980.

(2) It shall come into force on such date as the Government may, by notification in the *official Gazette*, appoint.

Definitions

2. 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) “competent authority” means-

(i) in relation to a Ministry, the Minister,

(ii) in relation to a statutory public authority, the Government,

(iii) in relation to a public officer, the appointing authority or, where there is no such authority, the Government;

(c) “public officer” means a public officer as defined in Article 152 of the Constitution and includes 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;

(d) “prescribed” means prescribed by rules made under this Act.

3. (1) There shall be an Ombudsman who shall be appointed by the President on the recommendation of Parliament.

Establishment
of office of
Ombudsman

(2) Parliament shall recommend for appointment as Ombudsman a person of known legal or administrative ability and conspicuous integrity.

4. (1) The Ombudsman shall, subject to this section, hold office for a term of three years from the date on which he enters upon his office, and shall be eligible for reappointment for one further term.

Term of office
of
Ombudsman

(2) The Ombudsman shall not be removed from his office except by an order of the President passed pursuant to a resolution of Parliament supported by a majority of not less than two-thirds of the total number of members of Parliament on the ground of proved misconduct or physical incapacity:

Provided that no such resolution shall be passed until the Ombudsman has been given a reasonable opportunity of being heard in person.

(3) The Ombudsman may resign his office by writing under his hand addressed to the President.

5. Subject to this Act, the remuneration, privileges and other conditions of service of the Ombudsman shall be the same as are admissible or applicable to a Judge of the Appellate Division.

Remuneration,
etc. of
Ombudsman

6. (1) The Ombudsman may investigate any action taken by a Ministry, a statutory public authority, or a public officer in any case where-

Functions of
Ombudsman

- (a) a complaint in respect of such action is made to him by a person-
 - (i) who claims to have sustained injustice in consequence of such action; or
 - (ii) who affirms that such action 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 is of the nature mentioned in clause (a).

(2) Nothing in this section shall authorise the Ombudsman to investigate any civil or criminal proceedings before any Court, or the function performed by, or the conduct of, a person acting as a member of a Court.

Procedure in respect of investigations

7. (1) Where the Ombudsman proposes to conduct an investigation under this Act, he shall-

- (a) forward a copy of the complaint or, in the case where he proposes to conduct the investigation on his own motion, a statement setting out the grounds therefore, to the Ministry, statutory public authority, or the public officer concerned;
- (b) afford to the Ministry, the statutory public authority, or the public officer concerned an opportunity to offer its or his comments on such complaint or statement.

(2) Except as aforesaid the procedure for conducting any such investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case.

(3) The Ombudsman may obtain information from such persons and in such manner, and make such inquiries and in such manner, as he thinks fit.

(4) Where any action is under investigation by any other person under any other law, the Ombudsman shall not investigate such action unless, for reasons to be recorded in writing, he is of opinion that an investigation by him is necessary.

Evidence

8. (1) Subject to the provisions of this section, for the purposes of an investigation under this Act, the Ombudsman may require any public officer or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Ombudsman shall have all 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) 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 a copy thereof from any Court or office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) such other matters as may be prescribed.

(3) Any proceeding before the Ombudsman shall be deemed to be a judicial proceeding within the meaning of section 193 of the Penal Code (XLV of 1860).

(4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or persons in Government service, imposed by any law, shall apply to the disclosure of information for the purposes of any investigation under this Act.

(5) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document-

- (a) as might prejudice the security or defence or international relations of Bangladesh, or the investigation or detection of crime; or
- (b) as might involve the disclosure of proceedings of the Council of Ministers or any committee thereof;

and for the purposes of this sub-section a certificate issued by a Secretary to the Government certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b) shall be conclusive and binding.

(6) Without prejudice to the provisions of sub-section (4), no person shall be compelled for the purposes of an investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in any proceedings before a Court.

Reports of
Ombudsman

9. (1) If, after investigation of any action under this Act, it appears to the Ombudsman that injustice has been caused to the complainant or to any other persons in consequence of maladministration in connection with such action, the Ombudsman shall, by a report in writing, recommend to the competent authority concerned that such injustice should be remedied in such manner and within such time as may be specified in the report.

(2) The competent authority to which a report is sent under sub-section (1) or a person authorised by it in this behalf shall, within one month of the expiry of the time specified in the report, intimate to the Ombudsman of the action taken for compliance with the report.

(3) If, after investigation of any action under this Act, it appears to the Ombudsman that such action has resulted in favour being unduly shown to any person or in accrual of undue personal benefit or gain to any person and that this may be substantiated, he shall, by a report in writing, communicate his findings, together with the relevant documents, materials and other evidence, to the competent authority concerned and recommend such legal, departmental or disciplinary action as he deems fit.

(4) The competent authority or a person authorised by it in this behalf shall examine the report forwarded to it under sub-section (3) and, within one month of the date of receipt of the report intimate to the Ombudsman the action taken or proposed to be taken on the basis of his report.

(5) If the Ombudsman is satisfied with the action taken or proposed to be taken on the basis of his report referred to in sub-sections (1) and (3), he shall close the case but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the President.

(6) The Ombudsman shall prepare an annual report concerning the discharge of his functions under this Act and submit it to the President who shall cause it, together with an explanatory memorandum, to be laid before Parliament.

(7) If, during any investigation under this Act, the Ombudsman finds any defect in any law, he may report such defect to the Government and recommend such reform of the law as, in his opinion, will remove such defect.

10. (1) The Ombudsman may appoint officers and other employees to assist him in the discharge of his functions. Staff of Ombudsman

(2) The categories of officers and other employees who may be appointed by the Ombudsman and their terms and conditions of service shall be such as may be prescribed after consultation with the Ombudsman.

(3) Without prejudice to the provisions of sub-section (1), the Ombudsman may, with the previous consent of the Government, utilise the services of any officer, employee or agency of the Government if such services are required by him for the purpose of discharging his functions.

11. For the purposes of an investigation under this Act, the Ombudsman may enter upon and inspect any premises and search and seize such books or documents as he deems necessary; and the provisions of sections 102 and 103 of the Code of Criminal Procedure, 1898 (V of 1898), shall, so far as may be, apply to such entry, inspection, search and seizure. Power of entry

12. (1) No person shall publish any proceedings relating to an investigation which is pending before the Ombudsman unless prior permission for the publication is obtained from the Ombudsman. Restriction of publication of proceedings

(2) Whoever contravenes the provision of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to three months, or with fine which may extend to two thousand Taka, or with both.

13. The Ombudsman shall have power to punish any person who, without lawful excuse, obstructs him in the performance of his functions with simple imprisonment which may extend to three months, or with fine which may extend to two thousand Taka, or with both. Power of Ombudsman to punish any person for obstruction

14. The Ombudsman may, by general or special order in writing, direct that any power conferred or any duty imposed on him by or under this Act may also be exercised or discharged by such of the officers, employees or agencies referred to in section 10 as may be specified in the Order. Delegation of powers

15. The Government may, by notification in the *official Gazette*, exempt any public officer or class of public officers from the operation of all or any of the provisions of this Act. Exemption

Immunities

16. (1) No suit, prosecution or other legal proceeding shall lie against the Ombudsman or any member of his staff in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings, decision or report of the Ombudsman shall be liable to be challenged, reviewed, quashed or called in question in any Court.

Power to make rules

17. The Government may, by notification in the *official Gazette*, make rules for carrying out the purposes of this Act.

Savings

18. The provisions of this Act shall be in addition to the provisions of any other law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act in respect of any action, and nothing in this Act shall limit or affect the right of such person to avail of such remedy.