



Ombudsman for Good Governance: Bangladesh Perspective

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ABSTRACT

In recent times the issues of good governance have received wide attention from the policy makers, researchers and the international donor agencies. The existence of Ombudsman promotes good governance around the world by ensuring administrative accountability and transparency. The necessity for the office of Ombudsman has been felt in Bangladesh ever since its independence. Our constitution makers incorporated provision for Ombudsman in article 77 of the constitution of 1972. In 1980, the parliament in Bangladesh passed the Ombudsman Act in pursuance of article 77 of the constitution. The office, however, has not yet been established and the provisions of the act have remained as dead letters. As a result, we have so far from the good governance in public administration. This paper provides an analytical overview of the Ombudsman institution as a mechanism of good governance in Bangladesh.

Keywords : Ombudsman, good governance, accountability, transparency.

1. INTRODUCTION

In theory and in practice, governance and public administration are indelibly linked. From time immemorial, a sound system of public administration has been a propelling force of good governance (Shelly, 2000). Both internal (developing societies) and external (the international development assistance community) demands for increased 'participation', 'transparency', 'accountability', 'rule of law', and 'decentralization' have been the stimuli for rethinking the role of public administration in good governance globally and specifically in Bangladesh (Laporte, 2000). The institution of Ombudsman is widely recognized as an instrument of accountability in public administration which furthers good governance. Ombudsman is seen as an independent and non-partisan officer (or committee of officers) often provided for in the constitution which supervises the public administration (Rahman, 2001). Unfortunately, we have so far had no Ombudsman, although the Constitutional provision and Act were made a long time ago. Among South Asian countries, India, Pakistan and Sri Lanka already have the Ombudsman system in place. It would, therefore, seem that we have fallen behind in this respect both in time and in relation to our immediate neighbors (Siddiqui, 1996).

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2. WHAT OMBUDSMAN MEANS

The word *Ombudsman* is originated from Swedish language. The Swedish word *ombuds* means *officer* or *spokesman* or *representative*. The office of Ombudsman was first conceived in Sweden by the Swedish Constitution Act 1809, over about two centuries ago, as an earlier prototype, the King's Chancellor of Justice (Rowat, 1986; Wade, 1967). According to *Dictionary of Public Administration* ombudsman is an independent, high-level official, usually with legal training, who is authorized to handle complaints from citizens who are not satisfied with the actions or lack of actions of any administrator in government, through the process of (1) inquiring into the matters involved, and; (2) making recommendations for appropriate solution (Raj, 1998). Professor Rowat has defined ombudsman as an independent and politically neutral officer of the legislature who receives and investigates complaints from the public against administrative action and who has the power to criticize and publicize but not the reverse such action (Rowat, 1986). According to Ruma Sultana the ombudsman is an institution established under the constitution or by the legislature that receives and investigates complaints reported by individual citizens against any government and institution and recommend corrective actions (Sultana, 2007). So we can depict that Ombudsman is a unique agency of the government which might be loosely translated as citizen's defender, grievance man or public watchdog. It's job is to receive complaints from citizens about the way in which they have been treated by government officials, to investigate these complaints and, where it finds them justified, proposing a remedy (Birkinshaw, 1994). When remedial action is not taken it can publicize the case and report on it to parliament.

3. OMBUDSMAN FOR GOOD GOVERNANCE: AROUND THE WORLD

Good governance can be defined as a public service that is efficient, a judicial system that is reliable and an administration that is accountable to the public. Good governance must reflect the will of the people (Rahman and Azizuddin, 1996). A key element of good governance is the accountability of government officials. Ombudsman offices and similar institutions of accountability play an important role in protecting citizens by addressing grievances arising from maladministration (such as unnecessary delays, failure to follow proper procedures, negligence, and improper service) by public officials (ADB, 2008). An ombudsman can promote good governance in administration.

To ensure justice, provision for appeal and rectification of errors and wrongdoings is a must. The concept of ombudsman was thought as a measure to raise citizen's grievance against public authority's mistakes and misdeeds. Sweden is the first country which made a constitutional provision in 1809 to introduce the office of the Ombudsman of Justice (Justitie Ombudsman) (Bala and Biswas, 2005). The figure of ombudsman, with its current characteristics, owes its origin from Sweden; however, its roots may be found in ancient history. Within the Islamic legal system, for example, during the era of Abbasids, complaint handling agencies called *Diwan Al Mazalim* were established. These institutions seem to have been headed by a senior judge. Under Turkish rule the *Quadi al Quadat* the *judge of judges*, exercised a similar function (Sultana, 2007). Although it first emerged in Sweden, it has proven to be effective in other countries as well, particularly when it has been implemented in harmony with the social and political structure, judicial system, cultural and demographic features of each country (*Turkish Daily News*, March 30, 1998). Finland is the second country to introduce the office of Ombudsman in 1919. After the Second World War, the idea of the Ombudsman institution began to spread rapidly throughout Europe (Bala and Biswas, 2005).

The Swedish Ombudsman model has indeed been followed throughout the world with local adaptations. Ombudsman started to gain popularity and credence since the early 1960s, with the introduction of the office in various Commonwealth and other countries,

including some European states. According to the information of International Ombudsman Institute, by 2005, the Ombudsman's office existed in 129 countries around the world. These include states with well-established democratic systems as well as those with shorter experiences of democratic (Iftekharuzzaman, 2007). New Zealand's adoption of the institution in 1962 paved the way for its early spread to other Commonwealth countries and the United States. After that the plan spread more rapidly, to both developed and developing countries (Rowat, 1985). Like our country, the designation *ombudsman* is directly used in Sweden, Finland and Denmark, while the authority with similar nature of ombudsman is often mentioned in different title in different countries, for instance, in Ukraine it is a *Ukrainian Parliament Commissioner for Human Rights*, in South Africa a *Guardian of the People*, in Poland a *Commissioner for Civil Rights Protection*, in France an *Intermediary of the French Republic*, in Latvia a *Controller of the Sejm*, in Greece a *Guardian of Citizens*, and in Moldova a *Parliamentary Attorney* (Shahiduzzaman, 2004). It is called *Parliamentary Commissioner for Administration* in Britain; *la Defensor del Pueblo* in Peru; *Wafaqi Mohtasib* in Pakistan, *Lokayukt* in India and so on. The following indicates the nomenclature of the ombudsman in different countries:

Table -1
Worldwide Ombudsman Office: Nomenclature

S.N.	Country	Nomenclature	Nature of government
1	Argentina	Defensor del Pueblo	Republic
2	Australia	Ombudsman	Commonwealth Nation, Democratic Federal State system. Ombudsmen are appointed at both level
3	Belgium	Commissaire du Parlement	Democracy under Parliament. Constitutional Monarch.
4	Canada	Ombudsman Le Protecteur du Citoyen (in Francophone setting)	Commonwealth Nation, Confederation with Parliamentary Democracy. Ombudsman are at provincial level only
5	Denmark	Ombudsmand	Constitutional Monarchy
6	Fiji	Ombudsman	Commonwealth Nation, Republic.
7	Finland	Ombudsman	Republic.
8	France	Le Mediateur	Republic.
9	Hong Kong	Ombudsman	Special Administrative Region of the People's Republic of China
10	India	Lokayukta	Commonwealth Nation, Federal Republic, Ombudsman operate in 12 states and legislation for a Federal Ombudsman termed Lok Pal is planned.
11	Italy	Defensore Civico	Republic
12	Japan	National Counselors responsible to a Ministry	Imperial Monarchy with Parliamentary Democracy

S.N.	Country	Nomenclature	Nature of government
13	Korea	Ombudsman	Democracy
14	Macau	High Commissioner against Corruption and Administrative Illegality	Overseas territory of Portugal (to be Special Region of China in 1999)
15	Netherlands	Ombudsman	Parliamentary Democracy under a Constitutional Monarch
16	New Zealand	Ombudsman	Commonwealth Nation, Parliamentary Democracy
17	Norway	Ombudsman	Hereditary Constitutional Monarch.
18	Pakistan	Wafaqi Mohtasib	Commonwealth Nation, Islamic Republic
19	Papua New Guinea	Ombudsman Commission	Commonwealth Nation, Independent State with Parliamentary Democracy
20	Philippines	Tanodbayan	Republic.
21	Portugal	Providor de Justica	Republic.
22	Samoa	Sulufajga, Ombudsman	Independent State
23	Solomon Island	Ombudsman	Commonwealth Nation, Parliamentary Democracy
24	Spain	Defensor Civico	Constitutional Monarchy
25	South Africa	Public Protector	Republic.
26	Sri Lanka	Ombudsman	Democratic Socialist Republic
27	Sweden	Ombudsman	Constitutional Monarchy
28	United Kingdom	Parliamentary Commissioner for Administration	Commonwealth Nation,
29	Vanuatu	Mediateur Abujman Ombudsman	Republic.

Source: Rahman, 2002:43-44.

Two major international organizations represent the Ombudsman of different countries/regions. These are the *International Ombudsman Institute* and the *Asian Ombudsman Association*. These institutes promote the concept of Ombudsmanship, encourage and support research, operate educational programmes having links with Ombudsmanship and collect, store and disseminate information about the Ombudsmanship institutions (Chowdhury, 2008).

Table-2
The Spread of Ombudsman Institution in African Countries

Years	1809-1959	1960-1969	1970-1981	1982-2005	Cumulative Total
Total No. of Countries	3	5	19	93	120
No. of African Countries	-	2	4	20	26

Source: Adamolekun, 2005:4.

There were also Ombudsman institutions at the provincial, state/regional levels of government in a few other countries, notably Australia, Canada, and the United States. The rapid expansion in the number of countries with Ombudsman institutions coincided with the worldwide democratization wave of the 1990s. In addition to the significant number of African countries highlighted in Table 2, the institution also spread to many countries in Latin America and Asia as well as to the transition countries in Central and Eastern Europe (Adamolekun, 2005). The development of the concept of ombudsman has, in many countries, helped reinforce democratic principles for the good governance and restore a climate of confidence between governments and citizens. The programme is consistent with the modern practice of good governance. The formation of an Ombudsman programme can be described as the establishment of a total quality management programme for the good governance within the state.

4. OMBUDSMAN IN BANGLADESH: A STEP TOWARDS GOOD GOVERNANCE

4.1. Why Ombudsman in Bangladesh?

In Bangladesh, there are some justifiable and practical reasons which necessitate the immediate establishment of ombudsman. These are:

Firstly, Bureaucratic excess, administrative grievances, thousands of cases pending with the Administrative Tribunals and Appellate tribunals; police atrocities inter-cadre or intra-cadre services' rivalries existence of innumerable ambiguous Acts, Ordinance, rules and regulations; and arbitrary decisions are the major impediments to good governance in Bangladesh (Rahman, 2002). Bangladesh which has a powerful bureaucracy needs to have an impartial, neutral, legal institution i.e., the ombudsman. The institutions of ombudsman can oversee the bureaucratic excesses and administrative grievances of the public. If the ombudsman system is institutionalized there would be less sycophancy and better management of the institution of the ombudsman.

Secondly, Corruption is a major cause for bad governance. Corruption is widespread in Bangladesh. The concern of government officials is how best they can squeeze funds for their personal benefits and it has become institutionalized. Development projects with huge funds are undertaken every year one failing to achieve the goals for the corruption (Ferdous, 2007). Bangladesh stands first for continual fifth time in corruption according to the report of Transparency International (Ara and Khan, 2006).

Table - 3
Sector-wise Corruption Ranking in Bangladesh by Transparency International

Rank	2002	2004	2005
1	Police	Police	Land administration
2	Lower judiciary	Education	Police and Lower judiciary
3	Land administration	Health & welfare	Health
4	Health & Education	Local government & rural development and communication	Education
5	Power sector	Environment and forest	Power supply
6	Direct and indirect tax	Private sector	Taxation
7	Nothing mentioned	Disaster management and relief	Shalish (arbitration)
8	Nothing mentioned	Taxation	Nothing mentioned

Source: Household Survey by Transparency International (www.transparency.org).

Ombudsman would help in redeeming the situation in two ways. Firstly by unvailing the administration excesses it can help improve the image of administration and secondly, by inculcating a sense of responsibility in the administrators and make them take more care in taking decisions and discharging duties (Rahman, 2002).

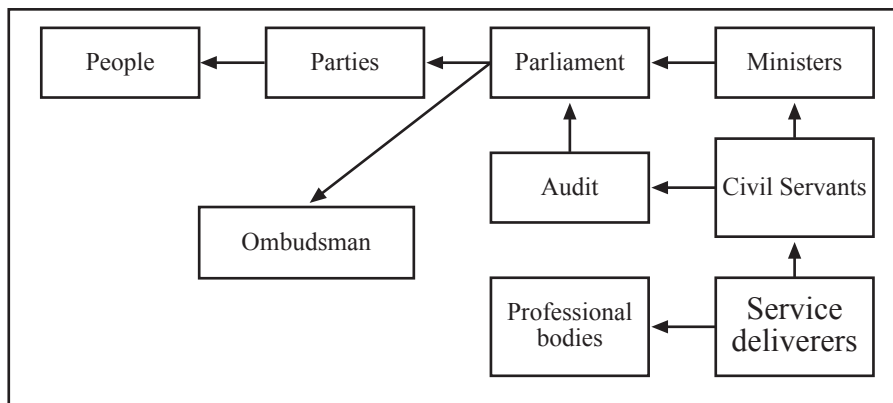
Thirdly, In Bangladesh, organizations in the public sector are becoming increasingly incapable, non-functional and failing. Accountability and transparency in the public sector is weak and fuzzy. Traditional internal mechanisms like hierarchy and supervision have mostly failed to ensure accountability and transparency. Decision making in the public sector lacks transparency as secrecy is jealously guarded with certain rules like the *Official Secrets Act, 1923 and Government Servants (Conduct) Rules, 1979* (Khan, 2007). If there is an office and proper functioning of a duly appointed ombudsman by the parliament, then the accountability and transparency in administration is likely to be well ensured and our public administration will be more effective and clean for the benefit of the people.

Fourthly, though we have a court system to resolve legal disputes of various types, it is beset with some chronic problems. The most prominent of them is the inordinate delay due to which our courts can provide only technical justice rather than 'substantial justice'. Cause of delay lies not in the paucity of judges only but mainly in the totally inadequate controlling system, defective investigation procedure, vertical taking 'illegal gratification, misplacing records, removing documents and sometimes even destroying the records' resulting in hindrances to its smooth functioning. But these artificial and technical problems can easily be mitigated by establishing a department of ombudsman (Halim, 2006).

Fifthly, in most cases our courts give the declaration of remedy whereas the real remedy lies with the administration and law enforcement agency which frequently flout the decision of the courts. The need of ombudsman in Bangladesh, therefore, came in focus in a number of cases of arbitrariness of the executive which called for remedial measures through a proceeding for writ in the High Court division. Had there been an ombudsman the necessity for bringing the cases to courts would not have arisen and the administration would not be able to neglect the court's order (Halim, 2006).

Sixthly, From the following diagram it can be said that the ombudsman system provides a forum which enables citizens to have access to an independent, impartial, and inexpensive dispute resolution mechanism, which can resolve their grievances, protect their human rights and restore their dignity and confidence in the democratic process (Khan and Ara, 2006).

Diagram - 1



Source: Khan and Ara, 2006:67.

Seventhly, Key to establishment of good governance is accountability and transparency of government which depends on the strength and sustenance of the National Integrity System (NIS). NIS is the sum total of the institutions and practices that have key roles in maintaining the honesty and integrity of the government, and thereby promoting good governance. It is through a holistic approach, involving each of the pillars of the NIS that accountable and transparent governance can be established and sustained (Iftekhazzaman, 2007).

Table - 4
Basic Requirements of the Effectiveness of the NIS Pillars

Pillar	Rules of the Game
Parliament	Fair Elections, Code of Ethics, Conflict of Interest Rules, Effective Committees
Judiciary	Independence, Integrity
Auditor General	Independence, Public Reporting & Debate
Watchdogs -ACC/Ombudsman	Independence, Capacity, Enforceable Law and supportive environment
Election Commission	Independence, Integrity, Capacity
Public Service	Non-partisan, Professional, Code of Ethics
Media	Freedom of Information Law, Integrity
Civil Society	Freedom of speech, Conducive Environ, Whistleblower Protection
Private Sector	Competition, Openness, Integrity - Publish What you Pay, Corporate Social Responsibility
International Cooperation	Linkage of national efforts with international - UNCAC

Source: Iftekhazzaman, 2007:3.

Complementing other watchdog bodies like the Anti-corruption Commission (ACC), and depending upon the effective functioning of other pillars, especially Judiciary, Parliament, and Auditor General, the Ombudsman has a key role in the national integrity system. Given due legal and institutional capacity for independent and effective functioning, the Ombudsman can play a catalytic role in ensuring social accountability of the public institutions and functionaries.

4.2 Constitutional and Legal Profile of Ombudsman

The Constitution of Bangladesh from the very inception in 1972 contains many productive and inspiring provisions to establish rule of law in the country. One of them is the provision of setting up of the office of *Ombudsman or Nay Pal*. Article 77 of the Constitution states:

- i. Parliament may, by law, provide for the establishment of as office of Ombudsman.
- ii. 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 the ministry, a public officer or a statutory public authority.
- iii. The Ombudsman shall prepare an annual report concerning the discharge of function and such report shall be laid before parliament (GOB 2002).

Our constitution makers being convinced by the fact that an institution like the ombudsman would be essential for safeguarding the interests and rights of the public in Bangladesh from administrative excess, have made provision for it in our constitution. But up to 1980 no definite attempt was made to establish the office of ombudsman. In 1980, at the initiative taken by the government of late President Ziaur Rahman the National Parliament passed the necessary act (Act No. XV of 1980) providing for the establishment of the office of ombudsman (Ahmed, 1993). But the scheme crushed before it could take off the ground with the assassination of the President Ziaur Rahman (Obaidullah, 1999). The main

characteristics of Ombudsman Act 1980 are:

- There shall be an Ombudsman who shall be appointed by the president on the recommendation of the parliament.
- Parliament shall recommend for appointment as Ombudsman a person if known legal or administrative ability and conspicuous integrity.
- It shall come into force on such date as the Govt. may, by notification in the official Gazette, appoint.
- The Ombudsman shall, subject 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.
- 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 majority of not less than two thirds of the total numbers of parliament on the ground of proved misconduct or physical incapacity.
- The Ombudsman may investigate action taken by a ministry, a statutory public authority, or a public officer in case where a complaint in respect of such action is made to him by a person.
- Ombudsman shall have the 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 (Hossain, 2002).

This office, however, has not yet been established and the provisions of the act have remained as dead letters. After 22 years of passing the Ombudsman act on January 6, 2002 the coalition government brought the act into force through a gazette notification (Rahman, 2002). However, before the enforcement of the law, the government decided that the Ombudsman would be appointed after updating the Act further. But no positive action is taken yet. Although in the context of emerging needs and success of other countries, Bangladesh has set up national sector specific Tax Ombudsman office. After publishing gazette of tax ombudsman in July 2005 the office has been set up in July 2006. In Bangladesh there is also ombudsman in the private sector: BRAC and Diabetic Association of Bangladesh are examples (Sultana, 2007).

4.3 A critical analysis of the Ombudsman Act

- **Appointment Procedure:** In a country like Bangladesh where the political system based on parliamentary system the provision made in the Act 'the Ombudsman shall be appointed by the President on the recommendation of the Parliament', sounds logical. But in the Act, there is no mention whether the opposition parties would also share the recommendation. In the absence of such specification, the Ombudsman would be naturally recommended by the ruling party and as such his/her independence, acceptability and impartiality may be seriously questioned by the opposition political parties and non-government actors.
- **Tenure:** The tenure of Ombudsman is three years. It seems the term of three years is not adequate. The President and the House of the Nation who will appoint him will remain in office, unless otherwise for a term of five years. It is therefore desirable that tenure of office should be equal to that of the President and the Parliament and be renewable for a further term depending upon his performance of the previous term.
- **Qualification:** As regard the qualification of the Ombudsman, the Act only states, 'The Ombudsman shall be a person of known legal or administrative ability and conspicuous integrity.' A person with legal capability may not have the requisite administrative ability and similarly a person with administrative capability may not have the legal ability, which is more essential for the post of Ombudsman. So the Ombudsman must have the legal as well as administrative expertise and experience. Such provision must be reflected in the

Act. In that case the word 'or' should be replaced by the word 'and'. Besides the term conspicuous integrity should be defined precisely and may include several elements including 'honesty in professional career'.

- **Jurisdiction:** The jurisdiction of the Ombudsman includes 'ministry', 'statutory public authority' and 'a public officer'. The jurisdiction should extend to 'local authority' and 'other public institution' too. As per Article 15, the Government may exempt any public officer or class of public officers from the operations of all or any of the provisions of the Ombudsman Act. This provision empowers the Government to limit the jurisdiction of the Ombudsman.
- **Power:** The scope of the Ombudsman's power to punish any person for obstruction of the function of the Ombudsman has not been mentioned. The Ombudsman may turn to the President if an administrative authority refuses to follow the recommendations of the Ombudsman. Sadly, under the existing all-powerful parliamentary system of governance in Bangladesh, the President does not have any executive power to implement the recommendations.
- **Function:** According to Article 6, the Ombudsman shall monitor and assess if the administration has conducted 'injustice' in exercising its powers. It is not spelled out on what basis the ombudsman shall assess if the actions of the administration are 'unjust'. The basis should not be solely the discretion of the Ombudsman. The 1980 Act did not specify anything with regard to maladministration. Many of the public grievances are linked with the government servants' arbitrary conducts, better known as maladministration without corruption. If the Ombudsman cannot deal with them, the whole institution would be weakened, to a large extent. It is also not clear whether the Ombudsman can take cases up on his own initiative.
- **Independence:** Lack of provision about the financial independence of the Ombudsman may endanger the independence of this institution. The Ombudsman's core funding is directly under Ministry of finance. This will make the Ombudsman very dependent on the Governments will to support the activities of the office. Article 17 empowers the Government to make rules for carrying out the purposes of the Act. It might be a problem that the Government may influence the Ombudsman by general rules.
- **Secrecy in the name of State:** According to [Sec. 8 (5)] of the Act, no person shall be required to furnish any such information or answer any such information or answer any such question or produce so much of any documents as might prejudice the security or defence or international relations of Bangladesh, of the council of ministers or any committee thereof and for the purposes stated here a certificate issued by a Secretary to the Government certifying that any information or answer or portion of a document is of such nature as mentioned earlier shall be conclusive and binding. This provision goes against the basic concept of Ombudsman.
- **Public Access:** There is no provision concerning publication of the Ombudsman's annual report to the public. The Act is also silent about the non-government actors. It is also not clear whether a complainant has to lodge a complaint to a higher administrative authority if it exists- and wait for its decision before being allowed to lodge in complaint to the Ombudsman.

5. CONCLUSION AND POLICY RECOMMENDATIONS

Undoubtedly, the Ombudsman Act 1980 has many limitations and shortcomings. The Act fails to envisage an effective and strong institution. In fact, it is impossible to establish an efficient ombudsman institution unless the Ombudsman Act is revised, clarified and updated. The Act must be amended. Or a separate legislation can replace the old one to

make a better start. However, Success of the system depends largely upon the nature of personality of the officer concerned. The role of Ombudsman especially that of the first Ombudsman, is extremely important. A general consensus in the House of the Nation regarding the appointment of Ombudsman candidate can greatly contribute towards establishing a credible and acceptable institution (Kamal, 2007). Given the window of opportunity created by the present government to strengthen the institutional foundations for good governance, it has become incumbent upon the Government to set up the Ombudsman. For ombudsman institution to be effective they need to be independent, possess sufficient powers to address citizen complaints of maladministration by government officials, and their staff need to have sufficient capacity to effectively perform their duties.

The office of Ombudsman is a crucial institution in ensuring both transparency and accountability of government decision making around the world. It is also a cost-effective institution in that the Ombudsman has the flexibility to deal with matters informally. The above discussion makes it clear that the establishment of an ombudsman in Bangladesh will undoubtedly go a long way in helping to ensure good governance. If the government's pledge to the people is to serve them and bring accountability and transparency within the public administration there is no alternative but to set up an office of ombudsman. If democracy and good governance are about preponderance of citizen's voice on matters of public interest, and if these are about preventing unlimited discretion of the Government and administration and ensuring social accountability in the governance process, the Ombudsman institution must be set up without any further delay.

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