

# Plenary Session 1

## Sub Theme

### The Ombudsman's Cross-Generational Challenges Arising from a Changing Demographic Structure

|   |    |
|---|----|
| Dr. Muhammad Shoaib Suddle . . . . .  | 47 |
| Federal Tax Ombudsman, PAKISTAN   |    |
| Dr. Gholamhossain Bolandian . . . . .   | 54 |
| Deputy for Planning and Resource Management, General Inspection Organization,<br>IRAN   |    |
| Prof. Masahiro Horie . . . . .  | 57 |
| Vice President and Professor, National Graduate Institute for Policy Studies/<br>Former Vice-Minister for Policy Coordination, MIC, JAPAN |    |
| <b>Contributed paper</b>  |    |
| Mr. Justice Prakash Prabhakar Naolekar . . . . .  | 64 |
| Provincial Ombudsman (Lokayukt), Madhya Pradesh, INDIA  |    |

## The Ombudsman's Cross-Generational Challenges Arising from a Changing Demographic Structure



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### **Introduction**

- ▶ Generations Today
- ▶ Demographic Profiles: Asian Region
- ▶ Generations: Core Values
- ▶ Generations: Attributes
  - ▶ Attitudes about government
  - ▶ Attitudes about authority
  - ▶ Attitudes about communication
- ▶ Age Discrimination:  
Findings of European Social Survey
- ▶ Varying Response Amongst Different Generational Tiers  
for the Ombudsman
- ▶ Building a Cross Generational Ombudsman Institution

## Generations Today

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- ▶ Traditionalists: 65 and over
  - ▶ Baby Boomers: 45 to 64
  - ▶ Generation X: 30 to 44
  - ▶ Millennials: 10 to 29
- 

## Demographic Profiles: Asian Region

| Country            | Generation           |                 |                 |             |
|--------------------|----------------------|-----------------|-----------------|-------------|
|                    | Tradition-<br>alists | Baby<br>Boomers | Generation<br>X | Millennials |
| Azerbaijan         | 6.40                 | 20.80           | 21.42           | 35.88       |
| China              | 8.90                 | 24.52           | 24.43           | 30.84       |
| Japan              | 23.10                | 27.00           | 20.72           | 20.39       |
| Hong Kong          | 13.50                | 33.74           | 23.10           | 22.20       |
| India              | 5.50                 | 16.67           | 21.55           | 36.50       |
| Indonesia          | 6.10                 | 18.14           | 22.74           | 34.86       |
| Iran               | 5.00                 | 14.88           | 23.06           | 40.73       |
| Korea              | 11.40                | 27.35           | 24.77           | 27.20       |
| Kyrgyz<br>Republic | 5.30                 | 16.48           | 18.82           | 39.15       |

### Demographic Profiles: Asian Regions

| Country     | Generation           |                 |                 |             |
|-------------|----------------------|-----------------|-----------------|-------------|
|             | Tradition-<br>alists | Baby<br>Boomers | Generation<br>X | Millennials |
| Macao       | 8.20                 | 26.42           | 25.54           | 30.00       |
| Malaysia    | 5.00                 | 18.09           | 21.68           | 35.00       |
| Pakistan    | 4.20                 | 12.44           | 17.71           | 42.11       |
| Philippines | 4.30                 | 13.88           | 19.37           | 38.72       |
| Sri Lanka   | 7.90                 | 21.29           | 22.14           | 31.44       |
| Thailand    | 9.20                 | 23.53           | 24.41           | 30.00       |
| Uzbekistan  | 4.70                 | 16.28           | 20.71           | 41.21       |
| Vietnam     | 5.50                 | 17.78           | 22.39           | 37.36       |



### Generations: Core Values

| Traditionalists            | Baby<br>Boomers                                  | Generation X                            | Millennials                                |
|----------------------------|--|---|--|
| Don't challenge authority  | Question authority                               | Are practical, believe in earning trust | Tolerant and realistic                     |
| Support law and order      | Challenge the old order                          | Are independent in their thinking       | Challenge status quo, but are street smart |
| Respect government         | Are anti-government                              | Are cynical about government            | Believe in doing their civic duty          |
| Follow rules               | Believe in making a difference                   | Are realistic in their approach to life | Are highly innovative                      |
| Believe in collective good | Support equal rights and equality of opportunity | Believe in work/life balance            | Trust in professionalism                   |



### Generations: Attributes

| Traditionalists                        | Baby Boomers                    | Generation X                | Millennials                      |
|--|---------------------------------|-----------------------------|----------------------------------|
| Believe in doing more with less        | Want value for money            | Are result-oriented         | Believe in competency, not title |
| Respect hierarchy                      | Support leadership by consensus | Strong sense of entitlement | 'Sky is the limit' approach      |
| Follow rules                           | Question rules                  | Skeptical of institutions   | Think globally                   |
| Are patient and understanding          | Like the Big Picture approach   | Are blunt and informal      | Are polite and street smart      |
| Prefer personal and formal interaction | Prefer to communicate in person | Are technology savvy        | Digital Generation               |

### Attitudes about government

| Traditionalists                                       | Baby Boomers                                       | Generation X   | Millennials  |
|---|--|--|--|
| Believe in government, reluctant to complain          | Critical of government actions and policies        | Are disinterested and disillusioned by government institutions | Believe in seeking meaningful civic engagement         |
| Reassure others that their complaints would be solved | Believe in citizen action and advocacy for results | Likely to avail government services                            | Are skeptical of growing bureaucracies                 |
| Their approach to problem-solving not aggressive      | Indifferent to interact with the government        | Believe in self empowerment; want to correct their mistakes    | Open-minded and less rigid, yet highly individualistic |
| Believe in self sacrifice for common good             | Believe in social justice                          | Not attached to career ladder                                  | Use moral suasion as an effective tool                 |

### Attitudes about authority

| Traditionalists   | Baby Boomers   | Generation X                               | Millennials                                   |
|---|--|--|---|
| Value institutional hierarchy   | Challenge the rules but still play the game                          | Respect earned, not a given                | Believe in competence, not seniority or title |
| Believe respecting those with authority, address them by their titles | Do not hesitate going to higher management, if not properly attended | Emphasis on results, address by first name | Emphasis on collaborative group work          |
| Respect authority and institutions                                    | Are mindful that their complaint is handled at appropriate level     | More casual and relaxed                    | Are polite to gain respect from authority     |



### Attitudes about communication

| Traditionalists                                  | Baby Boomers  | Generation X                             | Millennials                                  |
|--|---|--|--|
| Formal written communication (letters and memos) | Prefer direct, personal communication, but do use technology  | Prefer internet communication            | Emails, social media, online complaint forms |
| Not conversant with modern online applications   | Mindful of building rapport, better adept at using technology | Focus on efficient, direct communication | 24/7 communications                          |
| May allow more time for intake and follow-up     | May act as advocate for others                                | Less is more! Leave me alone!            | Open and comfortable with sharing everything |



### **Age Discrimination: Findings of European Social Survey**

- ▶ Carried out in 28 countries in 2009
- ▶ Results (for Britain):
  - ▶ 2 out of 5 Britons opined that they were ignored or patronized because of ageist views
  - ▶ 64% thought that age discrimination is a very serious or quite serious problem
  - ▶ 41% were of the view that people aged 70 or over contributed little to the economy
  - ▶ 36% opined that such people were a burden on healthcare services



### **Varying Response Amongst Different Generational Tiers for the Ombudsman**

- ▶ Traditionalists are likely to accord more respect to the Ombudsman institution
- ▶ Boomers and Generation X fully support the Ombudsman institution; they are likely to be more responsive to people's problems
- ▶ Millennials may feel skeptic about the Ombudsman institution, yet they may seek more meaningful engagement with the institution
- ▶ Using preferred modes of communication, the staff at the Ombudsman's offices can interact more positively and meaningfully with their clients



## **Building a Cross Generational Ombudsman Institution**

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- ▶ Every generation possesses useful traits, conflicts within, and poses a challenge to new concepts, ideas and thoughts
  - ▶ Old concepts, infrastructures and mechanisms need to be replaced and developed quickly, according to the latest technological developments
  - ▶ Ombudsman staff to reflect cross generational sensitivities
  - ▶ Training in the fields of information technology, and modern Ombudsman concepts, including cross generational issues
- 



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**THANK YOU**

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## The Ombudsman's Cross-Generational Challenges Arising from a Changing Demographic Structure



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Deputy for Planning and Resource Management  
General Inspection Organization  
IRAN

In the Name God the Merciful the Compassionate

Mr. President,

Distinguish Colleagues

Ladies and Gentlemen,

Firstly, on behalf of my country, the Islamic Republic of Iran, I wish to express my deep pleasure to attend this valuable gathering organized to defend the human rights in its various dimensions.

The main spirit behind ombudsmen organizations implies exercise of supervision for protecting the rights granted to every person by the Almighty God on equal basis; and this is one of the sublime teachings stipulated in all divine religions and holy books.

Bearing in mind the fact that it is the Almighty God who exercises the ultimate supervision on the world for protecting the rights of all human beings all those governments that disregard rights of human beings in order to maintain their rule and interests are actually standing against the will of the Almighty, deliberately or non-deliberately swimming against the divine stream that honors the human rights.

Knowing that all those who, in the course of history, intended to defy the “divine will” have been doomed to fail we need to lay emphasis that those great powers who, just for their own ill-intentions and illegitimate interests, intend to use the question of the human rights as a leverage against their political opponents by manipulation of the existing global structures will face similar destiny.

Under current rather changeable social and economic climates, ombudsmen are facing unique challenges; the challenges which have been unprecedented at least in the previous century given the today's available communication technologies and tools.

Now all human beings are involved in the global institutionalized social and economic developments. The present era may by no means be compared with any juncture in the past in view of the existing

integration and march of millions of people towards a common objective that is removal of the unreal barriers dividing individuals; the barriers which unrightfully established in the course of centuries.

For dismantling the said barriers and obstacles to the global integration the present gathering is needed to make every effort towards and tackle all the impediments to materialization of all human rights, including the rights to enjoy freedom and independence. We need to do our best to realize and protect the people's beliefs and causes disregarded under false pretexts as well. As one of our most critical and important responsibilities it is also necessary for us to protect and preserve the natural process of all these positive developments.

Ladies and Gentlemen,

One of the major challenges facing the ombudsmen that I wish to further elaborate on is the demographic changes transpired in the course of generations. Emergence of any new subject, although at first glance may seem like a challenge but it may be turned into an opportunity if its nature and root and all its related aspects are properly identified and investigated and efficient and proper strategies adopted and managed accordingly.

Cross-generation differences have led to emergence of new factors and elements affecting the ombudsmen responsibilities which due to their complexity may not be dealt with by adopting a passive approach. Therefore a responsible and far-reaching ombudsman is needed to better deal with the issues and problems under the current circumstances.

According to Article 174 of the Constitution of the Islamic Republic of Iran the "the General Inspection Organization" was established in order to supervise performance of the public and government executive organizations and extend the required recommendations and intellectual assistance accordingly.

Iran, as one of the countries with youngest population in the world, has aptly identified and understood the issue of the Cross-generation differences. Now we are prepared to use this historic opportunity. Out of the 75 million Iranian population 38 millions are men and 37 millions are women. The Iranian female and male populations below 30 years old include respectively %58.2 and %58.5 of the total population.

With the purpose of supporting the rights of the Iranian population, in addition to the mechanisms provided in the Constitution and other positive laws, a number of measures have already been adopted by the General Inspection Organization which includes the following:

- 1- Implementation of the program for involving the volunteer inspectors and supervisors in the relevant activities with the purpose of utilizing knowledge, experiences and expertise of inspectors from different generations; through this program the General Inspection

Organization could facilitate cooperation among individuals from different generations and assist identification of the problems they are grappling with.

- 2- Establishment of a national supervisory dashboard in favor of restoration of the people's rights against government and public organization.
- 3- Establishment of the Young Consultants Group and exercise supervision over and assessment of their performance in more than 70 bodies and organizations, affiliated to the government and NGOs, and accordingly provision of the required ground for further involvement of the young population in depicting future of their country and actualizing their rights in due process.
- 4- Establishment of the electronic national on-line service (web) for collecting and investigating the complaints and having easy access to the relevant processes, the follow ups and outcome in the cyber space in current year has facilitated communication between the General Inspection Organization and 36937 of its service users (15710 notifications and 20687 complaints) and promoted the procedures for receiving the information on the relevant rights and identifying and removing the problems to this end.
- 5- Establishment of the center for Assessing Bureaucratic Integrity and Accountability of the System vis-à-vis the service users and evaluation of public satisfaction; by establishment of this center the General Inspection Organization has succeeded in producing valuable outcome for introducing strategies conducive to making ombudsman related decisions at macro level by administration of national and regional opinion polls.
- 6- At international level: making the suggestion for establishment of the Asian Ombudsman Association Cultural Group in Iran and its Permanent Cultural and Training Secretariat; this Secretariat will be responsible to identify cultural and social methods and ways for better management of Cross-generation changes and rapid social developments at international level with the aim of turning the challenges facing the ombudsmen into golden opportunities in favor of restoration of the people's rights.
- 7- Active involvement of the General Inspection Organization in the relevant international events and the present meeting and embarking on bilateral and multilateral cooperation; making effective suggestions and recommendations given the valuable and successful experiences of the Government of the Islamic Republic of Iran in the last 32 years based on the sublime religious values of the Iranian population.

In conclusion I wish to thank you for your attention and patience and pray to the Almighty God for every success of the newly elected members of the board of directors.

I would like also to announce readiness of my country for extending its full cooperation for actualizing the objectives of the present gathering as well as our preparedness for hosting the next meeting in Tehran which will provide a valuable opportunity for you, distinguished participants, to get further familiarized with ombudsman achievements in Iran.

Thank you

## Change of Population Structure of Japan and Roles of Administrative Counselors



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1. Change of Population Structure of Japan
2. Effects of Changes of Population and Response to Changes and Effects
3. Administrative Systems and Public Services for the Aged (Elderly)
4. Administrative Counseling System in Japan
5. Roles of Administrative Counselors in the Ultra Aged Society

**1. Change of Population Structure of Japan (1)**

(1) Population Pyramid of Japan in 2010 : not a pyramid but an electric rice cooker

(2) Change of Population Pyramid

1950 Bell →1975 Tree →2005 Rice Cooker →2025 →2050 Basket

(3) Japan as the Most Aged (Ultra Aged) and the Most Rapidly Aged Country

| (year)             | 1950        | 1970  | 1995  | 2005  | 2010   | 2030  | 2055 |
|--------------------|-------------|-------|-------|-------|--------|-------|------|
| 65 and over        | 4.9%        | 7.1   | 14.6  | 20.2  | 23.1   | 31.8  | 40.5 |
| (75 and over)      | (1.3)       | (2.1) | (5.7) | (9.1) | (11.2) |       |      |
| 15~64              | 59.7        | 69.0  | 69.5  | 66.1  | 63.7   | 58.5  | 51.1 |
| 0~14               | 35.4        | 23.9  | 16.0  | 13.8  | 13.2   | 9.7   | 8.4  |
| (Total Population) | 83.2million | 103.7 | 125.6 | 127.8 | 128.1  | 115.2 | 89.9 |

World Average Ageing Ratio : 5.2% (1950) 7.3% (2005) 16.2% (2050)

Years for the Ageing Ratio to increase from 7% to 14%:

Japan : 24 years (1970~1994)

France : 115 years, Sweden : 85 years, UK : 47 years, Germany : 40 years

\*Ageing Society = Ageing Ratio : from higher than 7% to 14 %

Aged Society = Ageing Ratio : from higher than 14% to 21%

Ultra Aged Society = Ageing Ratio : higher than 21%

**1. Change of Population Structure of Japan (2)**

(4) Change of Life Expectancy

| (year) | 1955  | 1985  | 1995  | 2005  | 2009  | 2015  | 2025  | 2035  | 2045  | 2055  |
|--------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| F      | 67.75 | 80.48 | 82.85 | 85.52 | 86.44 | 87.08 | 88.19 | 89.06 | 89.77 | 90.34 |
| M      | 63.60 | 74.78 | 76.38 | 78.56 | 79.59 | 80.22 | 81.39 | 82.31 | 83.05 | 83.67 |

(5) Change of Fertility Rate

| year | 1947 | 1948 | 1949 | 1950 | 1952 | 1960 | 1970 | 1980 | 1990 | 2000 | 2005 | 2010 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|
| rate | 4.54 | 4.4  | 4.32 | 3.65 | 2.98 | 2    | 2.13 | 1.75 | 1.54 | 1.36 | 1.26 | 1.39 |

\*First Baby Boom : 1947~1949 New Babies : 8.057 million in 3 years

Second Baby Boom : 1971~1974 New Babies : 8.162 million in 4 years

(6) Ageing of Japan as a Model for other Asian Countries

Asian countries and regions with low fertility rate are likely to take the similar course of ageing as Japan.

Total Fertility Rate for 2005~2010 and Ageing Rate in 2010

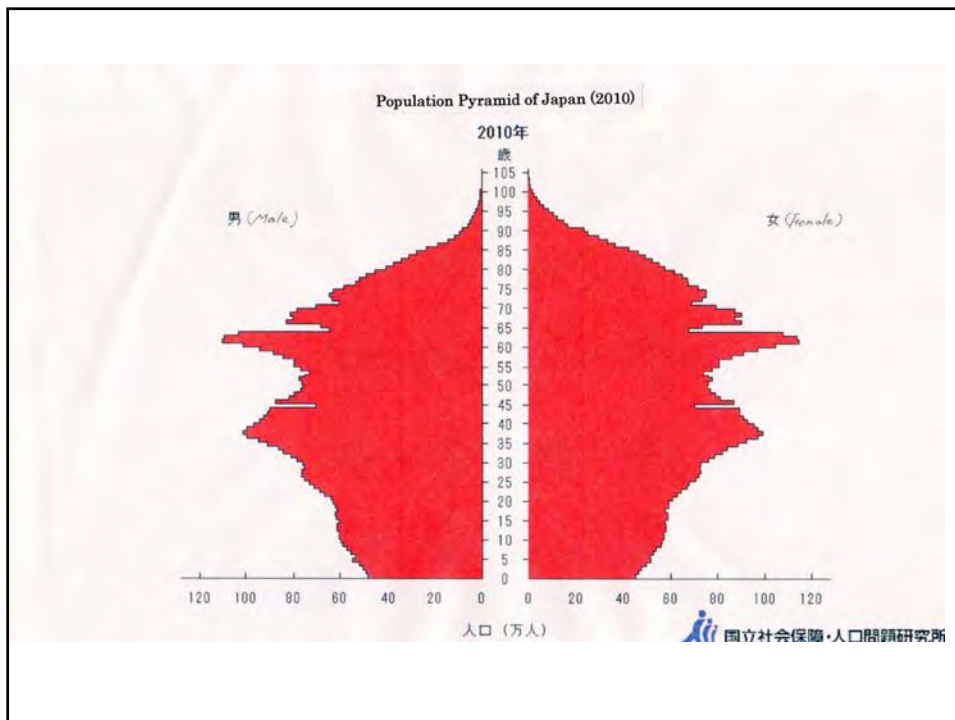
|           |     |      |
|-----------|-----|------|
| Korea     | 1.3 | 11.1 |
| China     | 1.6 | 8.2  |
| Hong Kong | 1.0 | 12.7 |
| Taiwan    | 1.2 |      |
| Singapore | 1.3 | 9.0  |
| Thailand  | 1.6 |      |

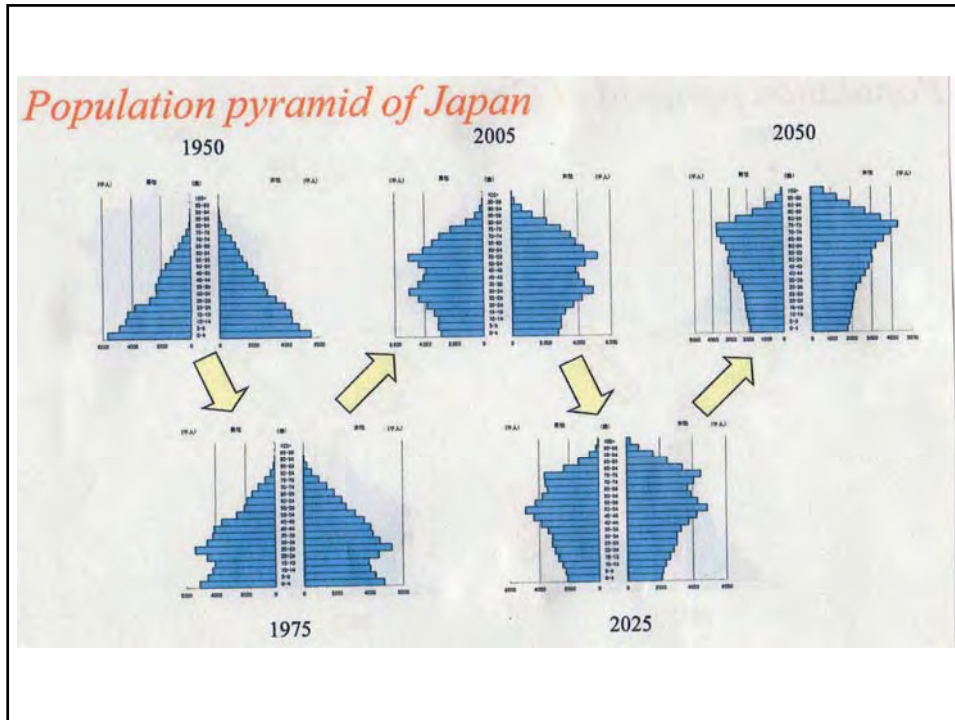
1. Change of Population Structure of Japan (3)

(7) Change of Household (Family) Structure

| (year)  | 1980  | 1990 | 2000 | 2005 | 2009 |
|---|-------|------|------|------|------|
| Household with 65 or older person (ratio to all households) | 24.0% | 26.9 | 34.4 | 39.4 | 41.9 |
| Household composed of three generations                     | 50.1* | 39.5 | 26.5 | 21.3 | 17.5 |
| Household composed of parent(s) and unmarried child(ren)    | 10.5* | 11.8 | 14.5 | 16.2 | 18.5 |
| Household composed of a couple only                         | 16.2* | 21.4 | 27.1 | 29.2 | 29.8 |
| Household composed of a single person                       | 10.7* | 14.9 | 19.7 | 22.0 | 23.0 |

\* ratio to all households with 65 or older person





#### The 21st century is a century of the prosperity of Asia.

|             | Real GDP Growth Rate (%) |           |           |         |
|-------------|--------------------------|-----------|-----------|---------|
|             | 1980-90                  | 1990-2000 | 2000-2010 | 2010-16 |
| Japan       | 4.6                      | 1.2       | 0.7       | 1.5     |
| NIES        |                          |           |           |         |
| Korea       | 9.7                      | 6.5       | 4.1       | 4.2     |
| Taiwan      | 7.6                      | 6.2       | 3.9       | 5.1     |
| Hongkong    | 6.7                      | 3.9       | 4.0       | 4.4     |
| Singapore   | 7.7                      | 7.2       | 5.6       | 4.4     |
| China       | 9.3                      | 10.4      | 10.5      | 9.5     |
| ASEAN4      |                          |           |           |         |
| Thailand    | 7.9                      | 4.4       | 4.3       | 4.6     |
| Malaysia    | 6.0                      | 7.1       | 4.6       | 5.1     |
| Indonesia   | 5.5                      | 4.0       | 5.2       | 6.7     |
| Philippines | 1.7                      | 3.0       | 4.7       | 5.0     |
| Vietnam     | 5.9                      | 7.6       | 7.3       | 7.1     |
| India       | 5.8                      | 5.6       | 7.5       | 8.1     |
| World       | 5.8                      | 4.0       | 0.5       | -0.9    |

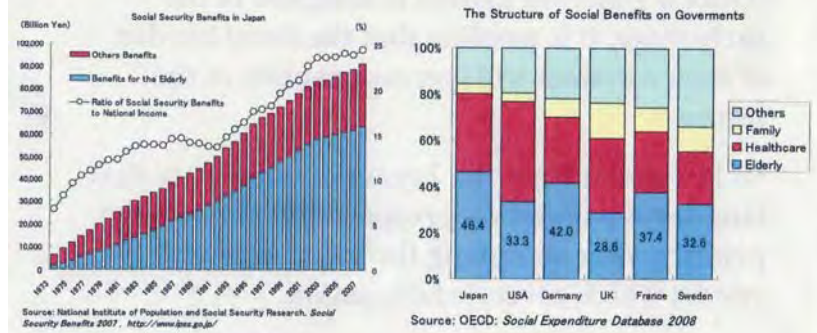
Source: IMF, *World Economic Outlook*, April 2011

#### But... Rapid Changes of Asian Demographic Situation

|             | Total Fertility Rate and Ratio of Ageing in East Asia (%) |         |                    |      |
|-------------|---|---------|--------------------|------|
|             | Total Fertility Rate                                      |         | Ageing Ratio (65+) |      |
|             | 1985-1990   | 2005-10 | 2010               | 2025 |
| Japan       | 1.7   | 1.3     | 22.7               | 29.3 |
| NIES        |   |         |                    |      |
| Korea       | 1.6   | 1.3     | 11.1               | 19.6 |
| Taiwan      | 1.7   | 1.2     | -                  | -    |
| Hongkong    | 1.4   | 1.0     | 12.7               | 21.8 |
| Singapore   | 1.7   | 1.3     | 9.0                | 19.5 |
| China       | 2.6   | 1.6     | 8.2                | 14.0 |
| ASEAN4      |   |         |                    |      |
| Thailand    | 2.3   | 1.6     | 8.9                | 15.0 |
| Malaysia    | 3.6   | 2.7     | 4.8                | 8.6  |
| Indonesia   | 3.4   | 2.2     | 5.6                | 8.6  |
| Philippines | 4.5   | 3.3     | 3.6                | 5.8  |
| Vietnam     | 4.0   | 1.9     | 6.0                | 10.2 |
| India       | 4.1   | 2.7     | 4.6                | 7.3  |
| World       | 3.4   | 2.5     | 7.6                | 10.5 |

Source: UN, *World Population Prospects, the 2010 Revision*

## A huge burden of population ageing in Japan



Figures and tables of *Population pyramid of Japan*, *The 21<sup>st</sup> century is a century of the prosperity of Asia*, *But --- Rapid Changes of Asian Demographic Situation*, and *A huge burden of population ageing in Japan* are cited from “Ageing Asia: Impacts on economy and society” (May 2011) of Keiichiro Oizumi.

### 2. Effects of Changes of Population and Response to Changes and Effects

- (1) Change of the size of population and population structure of a country causes considerable social and economic effects on every aspect of the country and people's lives.
- (2) Problems and Challenges to Individuals, especially to the Aged People (Elderly)
  - They are concerned about
    - Healthy, Worthwhile and Vital Life
    - Housing
    - Daily Life Assistance and Care
    - Medical Care
    - Asset and Property Management
    - Inheritance
    - Miscellaneous
- (3) Individuals must adjust their lives to changes.
  - But the society and government must play big roles to respond to the changes and effects.
    - Self-help (Do it yourself!)
    - Mutual help
    - Public help
  - The financial condition affects the content and extent of public help.
  - The concept of “new public” is emphasized in Japan by the current DPJ government.



**3. Administrative Systems and Public Services for the Aged (Elderly)**

- (1) Various administrative systems have been introduced to help the aged.  
Existing systems are frequently amended. New systems will be added if necessary.
- (2) Various public services are provided by the government to help the aged directly or indirectly.  
National systems are often implemented by local governments.  
Local governments can provide public services by their own initiatives in response to their specific needs.  
Ex. Housing (such as housing with care services for the aged)  
Public pension  
Public health and medical care (supported by the government insurance)  
Daily life care ("long term care" supported by the government care insurance)  
Livelihood assistance (cash payment)  
Barrier - free public facilities  
Legal affairs consultation (not limited to the aged)
- (3) These administrative systems are often complicated and not easy for the aged to understand.  
Qualifications, eligibility and procedure may not be clear to them.  
They may not obtain the expected public services and benefits.
- (4) The aged, especially those who are living alone, often need assistance to get public services and to get out of troubles such as deceptive telephone calls, domestic violence, etc.

**4. Administrative Counseling System in Japan**

- (1) Various Counseling Systems at the National and Local Government Level
  - General and Comprehensive Counseling System  
Ex. Administrative Counseling System by MIC
  - Specialized Counseling System for Limited Coverage  
Ex. Welfare Services Counseling System
- (2) Administrative Counseling and Administrative Counselors  
(Independent third party watch-dog in the National Government)
  - Administrative Evaluation Bureau (former Administrative Inspection Bureau) (MIC)
  - Regional and District Administrative Evaluation Offices (with offices in each prefecture)
  - Administrative Grievance Resolution Promotion Council (at the Head Office of MIC and Regional Administrative Evaluation Bureaus)

(Counselors)

  - Administrative Counselors
    - selected from among local residents who have social confidence and passion
    - commissioned by the Minister of MIC to deal with citizen's complaints in an area in a municipality assigned to each counselor
    - work with Regional Administrative Evaluation Bureaus and District Offices

4928 Counselors (as of FY2011) = Male 3253 + Female 1675

| age     | 30 ~39 | 40 ~49 | 50 ~59 | 60 ~64 | 65 ~69 | 70 ~74 | 75 ~79 | 80 ~ |
|---------|--------|--------|--------|--------|--------|--------|--------|------|
| persons | 10     | 47     | 409    | 1392   | 1516   | 970    | 474    | 110  |

5. Roles of Administrative Counselors in the Ultra Aged Society (1)

- (1) Administrative Counselors are expected to play an important role in the Ultra Aged Society.  
They are independent third party counselors who are familiar to local residents. Especially for those who do not want to have a direct contact with government offices against which they have complaints, administrative counselors are highly respected and reliable people near by.
- (2) Administrative Counselors must be good listeners and interpreters.  
Complaints or cases of counseling may come from the aged people themselves, or their family members, or others who have no family relationship with the aged in question.  
The aged people may be satisfied with just being listened to.  
There may be complicated cases, however, involving the possible conflict of interest among those concerned. Counselors must interpret the cases correctly.
- (3) Proactive counseling activities by Administrative Counselors may be necessary.  
In the ultra aged society where the aged people do not necessarily speak out loudly their complaints, there may be unspoken cases of negligence, injustice or unfair treatment even by their family members or "care-takers."  
Especially for the aged people living alone, proactive counseling activities will be effective.
- (4) For Administrative Counselors to play expected roles effectively, they must be provided with sufficient up-dated data and information about the relevant administrative systems and public services for the aged people. Seminars and training programs will be effective.

5. Roles of Administrative Counselors in the Ultra Aged Society (2)

- (5) Counseling activities jointly organized with other counselors with specialized jurisdiction are efficient and effective.  
Complainants are not necessarily aware which counselor is to deal with their cases. In the ultra aged society, it is likely that there are more cases like this.
- (6) Administrative Counselors are authorized by law and encouraged to submit their opinions to the MIC Minister for the improvement of government administration.  
In the rapidly changing ageing society or aged society, there occur many cases that existing administrative systems, public services and their implementation do not fit in the real world.  
  
(Recent case proposed by an Administrative Counselor)  
Expansion of the eligibility to receive the unpaid pension of a dead person  
-Current system (two requirements)
  - spouse of a dead person or a relative of a dead person within the second degree of relationship by blood (such as child, parent, grandchild, brother or sister)
  - (and)
  - a person who lived together with the dead at the time of the death-Proposal
  - expand the eligibility to include a person of the third degree relationship such as nephew or niece
  - abolish the requirement of living together in the same livelihood

Contributed paper

**The Ombudsman's Cross-Generational challenges  
arising from a changing demographic Structure  
- Indian Experience-**

**Mr. Justice Prakash Prabhakar Naolekar  
Provincial Ombudsman (Lokayukt)  
Madhya Pradesh, INDIA**

Change is the part of life. It is linked with the desires and dreams of every human being. Desire to be different, desire to achieve something new, desire to create and contribute and thereby desire to be recognized and to be respected. Such desires are the spirit of human being and motivating factors. These desires are always changing and resulting in challenges at various dimensions of the society be that social, political, administrative, economical and behavioral. Every change poses challenge to the respective society in a given situations and times. Success and failure of efforts of the societies whether locally, regionally, nationally and internationally are again linked with challenges of different kinds needing solutions entirely different in verities. Challenges to society, polity, economy and administration are addressed with different prescriptions because they are different in different society at different point of time. There can not be uniform solution for all the problems for all the time to come. That is why it is said 'one size will not fit to all. It may, therefore, be emphasized that all the time human beings are engaged in managing changes and its challenges in accordance with their perceptions and need. Common desire of every human being is to live in peace, prosperity and happiness. To achieve this, their efforts to construct the systems and sub systems which can produce desired result. This is on going process.

Constructed institutions to help and faster their desires are again of different natures, compositions, objectives and purposes and supposed to function in a consistently changing environment. The most dominant factor which is under constraint change in the history of human being, is the changing nature of human being. Human nature is changing under the influence of various factors therefore, their expectations, hopes and aspirations are also changing. For example, take the nature, concept and concern of 'state' as an institution to facilitate and fulfill human expectations has changed differently for different reasons. It has changed from laissez far estate to welfare state to administrative state and now to contracting state. With conceptual changes of the state its objectives, functions and processes are also changed. Why changes all the times? It is, inter-alia, because of changing demographic structure. We are aware of every innovations and creativity in any area of the life of the society be that scientific, technological, educational, humanitarian, political and economical have its impact on the

management of the affairs of its societies. The purpose of this paper is to highlight certain areas of concern viz; Governance Issues, issues relating to public sector ethics and problems posed by prevalent corruption. In most of the societies less or more either developed or developing and in this context, what role ombudsman is expected to play. My presentation, ladies and gentleman, is primarily influenced by the Indian experience but important aspects of international concerns have also been emphasised.

## **II. Concern for good Governance:**

The term governance refers to the manner in which government discharges its responsibility; is the government effective, are its operations transparent, is it accountable and does it conform to internationally accepted good practices. Governance is simply about organising collective action including management of the common affairs of the community in partnership of public and private, individuals and institutions with common goal. It is a continuous process through which conflicting interests are being accommodated and co-operative action are taken. In the institutional sense it require establishing of institutions and its sub systems that permit, prescribe, prohibit, praise and punish, certain action as well as resolve conflicts or disputes.

Concern for good governance, in a sense, may not be considered entirely new because it has always been there since the evolution of collective living and concern for others. To achieve it, various methods were tried in the past. In this sense, as mentioned earlier, concern for good governance is a on going project. However, the previous three decades since 1980 have witness a renewed, more vigorous demand, which has taken form of the movement for good / better governance. This involves the questioning of mission of governance and its instrumentalities; questioning of objectives, process and so on. Therefore, the demand for change against the established way of governance is the manifestation of the new order in which steering rather than rowing, empowering rather than serving, earning rather than spending, preventing rather than curing inter-alia, are being emphasised. What is being emphasised consistently is the need of efficiency, economy, effectiveness, equity and ethics in the functioning of the government. In addition the need of the making government responsible, accountable, transparent, participative, rational, fair, cost effective, caring and creative, inter-alia, are being advocated in view of the specific requirement at national, regional and local levels. Alongwith these advocacy, the prescription advanced are for bringing market processes in the functioning of the government and also promoting managerialism and provide space and encouragement to the organisations of civil society. Finally, what we need today is not mere governance but ETHICAL GOVERNANCE i.e. effective, transparent, honest, independent, capable, accountable, and leadership.

Impact of change on the way of government have been analysed as the expression of a turning point in paradigm of public administartion from a "classical weberian" to a "post bureaucratic model". Under

## Plenary Session 1

this model of governance, generally speaking, public services has strongly been argued to be replaced by, as it mentioned earlier, " managerialism" . Thrust is required to be given on customer driven, market oriented, result-directed, strategic and anticipatory way of governance. The new way of governance is often termed as New Public Management, which emphasises, inter-alia, on the following:

- reduction of bureaucratic hierarchies;
- Down sizing or right sizing of public services;
- identifications of the costs of inputs and outputs;
- use of contracts for the provision of public services;
- increase of provider competition;
- benchmarking and measuring performance;
- the increase of consumers powers;
- simplification of rules/regulations;
- promoter of rule of law value;
- mission driven;
- transparent;
- accountable;
- responsive; and
- service oriented etc.

It may also be highlighted that the NPM leads to the fragmentation and decentralisation of ministerial structures into smaller agencies and the empowerment of lower echelon employees, a deregulated government. Finally, what the good governance involved is not less but differently structured, empowered, accountable, transparent and corruption free government. The impact of these suggested changes as a part of good government package on the state and its instrumentalities are generally perceived as favorable to privatization, profit motive, deregulation and contracting out resulting in the smaller state, hollowing of state, down-sizing, right-sizing, renewal and re-inventing government.

It may further be added that the IMF has recognised the important role of good governance in influencing economic performance. Poor governance and wide spread corruption cut into government revenues and lead to wasteful spending, thereby weakening the macroeconomic position of a country. Governments are supposed to be prepared to challenge vested interest and root out corruption. They need to foster transparency in management of public funds and in the legal and regulatory frame works, and must establish competent and impartial court of law, trust worthy law enforcement agency and better trained, properly paid civil servants and judges. The global consensus on the importance of good governance can be effective only on the basis of the increased willingness and commitment of authorities to foster a transparent and accountable system of government at the national level. Let it be as it may.

### **III. Public Sector Ethics:**

In a scenario of government by contract there is considerable potential for conflicts of interest to arise in public service contracting, particularly in sensitive areas. In private sector, there is no duty of independence or impartiality and primary consideration is to shareholders, not the public. There is also the question of the effect of private sector contributions to politicians and political parties which might compromise the neutrality of those employed in public services. (hawala is the one example). The issue of independence, impartiality and neutrality were the once which led to the establishment of civil service. They will occupy the central place at the end of the day.

Public servants have a special relationship with the law. We know that certain legal constraints are imposed upon public servants which do not normally apply to others. Some public servants are engaged in the process of advising on legislation and in doing so are obliged to take a number of considerations into account which affect the commonweal. It would be instructive in this context to read the following:

"There are ..... other areas of ethical concern... the discretion civil servants have in implementing the law. when of-course laws, regulations and others cannot cover every variations in circumstances---- There cannot be appeal against every decision depending on a civil servant's discretionary judgment, so taking proper care over decisions of this kind and balancing the interests of the individual against the national interest are an important part of any civil service ethics."

It may also be mentioned that we cannot simply apply private sector techniques in the public sector since the public will not accept error or falling from grace. In public sector each individual and each decision counts. If in reality public services are the special land then it is obvious that peculiar consideration should apply to civil services.

It has been argued in United States that public power always carries ethical responsibilities. This responsibility includes supplying necessary information accurately and completely to the citizen and also include treating every member of the public with courtesy, attentiveness and respect. Civil servants must be accessible to all, regardless of social or economic status; free from bias, discrimination and unnecessary red tap; properly resourced and consistently maintained; delivered efficiently and effectively to a high standard and free of corruption, patronage and conflict of interest. There are special duties in relation to the exercise of discretion since government employment often provides access to sensitive information about public and private persons and activities. Those exercising discretion in such circumstances must do so with the utmost care.

This should finally be emphasised that while considering reforms for civil service, it may clearly be recognised that ethics of business management cannot be imported for civil service performance. The private sector is not, and cannot be, independent. It exists to create a financial profit from the service it provides. It has to be partial to its shareholders. The public services, on the other hand, has to be impartial and is not in the business of profit making per se. Therefore, one of the challenging issues on the agenda of civil services reforms is to harmonise opposing dimensions of the public service and the business administration ethics. The critical distinction between the sectors has been, and will continue to be, their relationship to the power of the sovereign. Government institutions are agent of the sovereign and function under public law. Private institutions are not agent of sovereign and function under private law. This distinction is critical and provides the theoretical foundation of public administration as well as civil service reforms.

In recent years the media have devoted considerable attention to corruption in the public sector, while citizens have begun to speak out more boldly against unethical behaviour by public officials. The perceived lack of integrity in government and the administration has in some instances contributed to declining voter confidence in state institutions and those working in them. Consequently, managing ethics in the public sector has become a great challenge to governments around the globe. Governments have responded to the problem in many ways, including highly focused campaigns to fight corruption, evaluation of the rules applying to public officials, and the adoption of the service charters and codes of conduct. The OECD's work on public sector ethics contributes to the global battles against corruption by addressing the "demand side" of the corruption equation. Through this approach, corruption is recognised as not simply an individual criminal action, but rather the result of systematic failure and management problem reflected in weak public institutions. In a changing scenario public servants are also assuming new functions and responsibilities due to devolution and greater managerial discretion, increased commercialisation of the public sector, evolving accountability arrangements, and a changing relationship between the public and private sectors, including the "revolving door" in employment. In short, they are having to adopt new ways of carrying out the business of government. To perform these in conformity with the demand of public sector ethics the OECD's recommendations are as follows<sup>1</sup>:

- (1) Ethical standards for public service should be clear;
- (2) Ethical standards should be reflected in the legal framework;
- (3) Ethical guidance should be available to public servants;
- (4) Public servants should know their rights and obligations when exposing wrongdoing;
- (5) Political commitment to ethics should reinforce the ethical conduct of public servants;
- (6) The decision-making process should be transparent and open to scrutiny;
- (7) There should be clear guidelines for interaction between the public and private sector;

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<sup>1</sup> For details on the above points see "Responding to the Challenges of Corruption" Publication No. 63, Rome/Milan, 2000. PP 168-170.

- (8) Managers should demonstrate and promote ethical conduct;
- (9) Management policies, procedures and practices should promote ethical conduct;
- (10) Public service conditions and management of human resources should promote ethical conduct;
- (11) Adequate accountability mechanisms should be in place within the public service;
- (12) Appropriate procedures and sanctions should exist to address misconduct.

#### **IV. Concern for Corruption**

Corruption is ancient and modern. History is replete with cases of bribery and nepotism but the academic study of corruption is primarily a late twentieth century phenomenon. While historians have recorded the details of individuals scandals, the dominant perspective has been one which sees corruption as a deviant and probably transitory activity. Individual scoundrels and scandals attracted attention and lent colour to otherwise mundane accounts of economic and political history. At the same time, the rise and fall of political machines in the USA and the elimination of rotten boroughs the other forms of electoral malpractice in the UK also attracted critical attention. The supposition was that corruption, like adolescence, is a phase which countries go through before they reach maturity. Thus corruption was either linked to the demonization of particular individuals or seen as a particular stage or point on the path to modernity.

Corruption may be thought of as the abuse of authority or trust for private benefit, and is a temptation indulged in not only by public officials but also by those in positions of trust or authority in private enterprise or non-profit organisations. While corruption undoubtedly will persist to some extent, regardless of the success in improving governance, poor governance creates greater incentives and possibilities for corruption. Toughening the legal strictures against, the punishment for, corruption is important, but it is even more critical that states tackle the underlying governance problems that may encourage corruption.

Corruption has become global in its scope and impact and however it may be categorised, corruption has become an increasing threat to the fabric of global society. Therefore, as with drug trafficking, pollution, international terrorism and other serious crime, the fight against corruption requires international co-operation.

Although the problem of corruption is global, many action to combat it have to be taken at the national level. Effective action can only be taken if there is a clear sense of national ownership of anti-corruption a strategies underpinned by a culture which is in-tolerant of corruption. More and wider information, education, empowerment of people and strong political leadership committed to effective action are all essential to create and sustain such a culture. Fewer discretionary power in



administration, greater reliance on diversity and wider scope for private initiative, a free press and adequately paid public servants appointed by merit, democratic processes in political parties and supremacy of the rule of law, are important factors that serve to promote good governance and reduce corruption.

## **V. National actions**

Under the overriding policy of zero tolerance, specific measures are required to prevent corruption, enforce laws against it and mobilise public support. These are, the essential elements of a coherent national strategy to achieve good governance and combat corruption. A general approach to the formulation of such strategy is to recognise the realities and importance of national circumstances and therefore the need for governments to develop their own national good governance and anticorruption strategy which should identify clear objectives, effective instruments, realistic timetables and credible implementation and monitoring mechanisms.

National strategies must encompass both the public and private sectors. Corruption in the private sector can be as corrosive to economic performance as public sector corruption, given that public sector corruption typically involves actors from the private sector. To establish a national culture opposed to corruption will require high standards of behaviour from all sections of society but especially from political leaders.

There will be a need for effective national campaigns against corruption with support from the highest levels of government and a high level of co-ordination in the implementation of the strategy. Hence, an important first step in developing national strategies is for the political leadership to recognise that corruption in both the public and private sectors has heavy economic and political costs and that, no matter how deeply embedded it is, it is possible to adopt effective measures against it, provided there is sufficient political will.

### **The main building blocks of the strategy**

Although the content of the strategy will vary depending on national circumstances. There are three main building blocks for an effective strategy in the fight against corruption, namely prevention, resolute enforcement and the involvement of civil society.

Prevention should address underlying causes of corruption, particularly those arising from failures of public policy and weaknesses in political and administrative institutions. Economic policy reform to reduce rent-seeking opportunities; civil service reform to improve the effectiveness and probity of the

public service; reforms in tax policy and administration; tightening of controls over public expenditure; and reforms in the political system are all important ingredients of a prevention strategy. An important contribution to the prevention strategy can be made by strengthening transparency in economic management through:

- full disclosure and examination of government finances, especially by parliamentary scrutiny;
- strengthening of parliamentary public accounts committees;
- the use of open competitive bidding for government contracts;
- publication of full information on the reports of government auditors and evaluations of development projects;
- media access to information on government finances;
- full disclosure of assets by government leaders and their families;
- placing international financial agreements before the legislature, including arms procurement, and establishing clear guidelines for fiscal discipline; and
- establishment of mechanisms for public exposure and transparency in economic management where the above do not occur.

**Prevention** should concentrate not only on the behaviour of the holders of offices of trust, but also aim to affect the behaviour of those who offer bribes. A code of practice for private business should spell out what is a corrupt practice and what is legitimate business promotion. Acceptable practices in relation to business sponsorship of public activities, such as sports and social events, and to the employment of public officials as consultants or in other capacities, while in office and after retirement, need to be spelt out. As with all regulations, prevention is more likely to be achieved if lawful behaviour is widely accepted as the norm.

**Enforcement** involves firm action against corrupt behaviour at all levels. Effective enforcement is dependent upon the competence and honesty of investigators, prosecutors and the judiciary, it is therefore vital to allocate adequate resources to ensure the probity of these agents, The law should apply with equality and impartiality in every respect and in access to legal remedies. Any ambiguities in laws and regulations that create incentives for corrupt behaviour should be removed.

**Mobilisation** of popular support through the involvement of civil society and popular opinion is important in changing public perceptions and values, as well as in exerting pressure on governments at both national and local levels to take the necessary action to prepare and implement anticorruption programmes. Perhaps the greatest potential force for reforms to combat corruption stems from public disapproval of corruption and the burdens it places on citizens. Popular pressures can therefore challenge vested interests and ensure accountability for the management of public resources.

Popular opinion can be activated and galvanised through the educational impact of the media and through the activities of NGOs. In this respect, the commitment of governments to freedom of

expression and association is a critical factor in creating conditions which are conducive to improving governance and eliminating corruption. However, in situations where the media itself may be corrupt or susceptible to corruption, adherence to the highest standards of integrity in journalism should be promoted

The holders of public offices should always remember that the exercise of public powers always carries with it a responsibility of exercising that power transparently, justly, reasonably, fairly and constitutionally. The Council of Ministers are jointly and severally responsible to the legislature. The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the Minister of the Department. Therefore, they are indictable for their conduct or omission, or misconduct or misappropriation. Their responsibility is not only to the legislature as a part of traditional Constitutional doctrine of Ministerial responsibility but also to the public for the acts or conducts in the performance of public duties.

The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of the public duties. The public duties always carries a responsibility of public interest, public purpose and public good. The holder of a public office is said to have misused or abused his/her position when he exercised the public power for personal gain and greed as distinguished from public interest and public good. The improper exercise of public power may result when he has done something which ought not to have been done. In a democracy governed by the rule of law, the most elementary qualification needed for a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also manifest to possess the same. This holds true, also for all those who are the repository of public powers. I wish to present Capt. Satish Sharma and Smt. Shiela Kaul cases, decided by the Supreme Court of India.

### **Facts of Capt. Satish Sharma<sup>2</sup> and Smt. Shiela Kaul<sup>3</sup> Cases**

"In Satish Sharma's Reign, Petrol and Patronage Flow Together", this was the news item dated 11-8-1995, on the front page of the Indian Express. Pursuant to this news item Shri H.D.Shourie, Director, Common Cause, filed a Public Interest Litigation before the Supreme Court under Article 32 of the Constitution. In his petition, it was challenged that the allotments of retail outlets for petroleum products (petrol pumps) made by the then Minister of State for Petroleum and Natural Gas, in exercise of the powers of the Union Government in favour of 15 persons had been made arbitrarily and on extraneous considerations. The allottees were related either to politicians or Oil Selection Boards or various officials in the Ministry.

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<sup>2</sup> Common cause, A Registered Society vs Union of India, (1996) 6 SCC 593

<sup>3</sup> Shiv Sagar Tiwari vs Union of India (1996) 6 SCC 558

The Secretary, Ministry of Petroleum and Natural Gas, Government of India, filed an affidavit dated 9-10-1995 pursuant to the order of the Supreme Court dated 11-8-95 which was not satisfactory. The court stated that "without commenting on the affidavit, we direct the Ministry of Petroleum and Natural Gas to file a further and better affidavit within two weeks with reference to the specific instances"<sup>4</sup>. Thereafter the Secretary filed yet another affidavit dated 23-10-1995 . In this affidavit the allotments of petrol pumps were classified" as, (1) Allottees related to politicians; (2) Allottees related to the members of Oil Selection Boards or the members themselves; (3) Allottees who are related to various officials in the Ministry. The Court issued notice to all the 15 persons. Thirteen, out of them filed affidavits justifying the allotments of petrol pumps made to them by Capt. Satish Sharma. The Court also passed an order dated 6-12-1995 directing that "the Minister may if he so desires, file an affidavit in this regard". Capt. Satish Sharma had, however, not chosen to file any affidavit".

The Court after going through the official records in regard to these allotments have noticed that all the 15 allotments were made by the Minister in a Stereotyped manner.

The applications were not officially received by the Ministry. There is no receipt - entry on any of the applications. The applicants seem to have approached the Minister directly. None of the applications have been dealt with in any of the branches of the Ministry. There is nothing on the record to indicate that the Minister kept any criteria in view while making the allotments. There was nothing on the record to show that any other method to invite applications was followed. No guidelines were taken into account while making the allotment. Six of the allottees were related to various officials working with the Minister including Minister's driver, his Private Secretary, Additional Private Secretary and Personal Assistant to the Additional Private Secretary. Two of the allottees were- related to the politicians, Remaining seven allottees were either members of the Oil Selection Boards or their relations. It was observed

"It is obvious that Capt. Satish Sharma was personally interested in making allotment of Petrol Pumps in favour of all these 15 persons. He made allotment in favour of relations of his personal staff under the influence of the staff on wholly extraneous considerations. The allotments to the sons of the Ministers were only to oblige the Ministers. The allotments to the members of the Oil Selection Boards and their/Chairman's relations have been done to influence them and to have favours from them."<sup>5</sup>

All the 15 allotments were held by the Court as "wholly arbitrary, nepotistic and are motivated by extraneous considerations".

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<sup>4</sup> (1996) 6 SCC 530 at 535

<sup>5</sup> I bid. P. 553

Smt. Shiela Kaul, (Shivsagar Tiwari Vs. Union of India)<sup>6</sup> popularly known as Housing Scam Case, came before the Supreme Court under Article 32 of the Constitution as a Public Interest Petition. The Supreme Court directed the CBI to inquire into the matter by its order dated 14-2-1996. The CBI inquired into the matter and submitted 4 interim reports. According to CBI, orders of allotment in respect of the shops/stalls in question were passed by Smt. Shiela Kaul, the then Minister in the Union of India, and all the 6 shops were allotted by her to her own relatives/employees/domestic servants of her family members and family friends. The CBI had also reported that Smt. Kaul had made ten different categories of persons as the basis for deciding allotment but even this categorisation was not adhered to while making allotments<sup>7</sup>.

The Supreme Court in its order dated 19-7-1996 noted that a regular case under sections 120-B, 420, 468/471 IPC and Section 13 (2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988 has been registered against Smt. Shiela Kaul and her Additional Private Secretary Rajan S. Lala and others. Under the direction of the Court Shri Hercharan Jeet Singh, Director of Estates, filed an affidavit, which was taken up for consideration on 6-9-1996. The Director of Estates stated in the affidavit that from 1994 onwards 52 Shops/stalls had been sanctioned by the then Minister of Urban Development, Smt. Shiela Kaul out of which 7 shops were allotted before the approval of the policy of 1994. The Court provided an opportunity to all these persons. A Direction was, therefore, given to the Director to issue individual notices to the 52 persons to be personally present in the Court or be represented through their counsel on 27th September 1996. These allottees were heard.

### **Main questions before the Court**

In both the cases the main question before the Court was whether allottees were selected in accordance with law. In search of the answer to this main and important question the court judge the actions of both Capt. Satish Sharma and Smt. Shiela Kaul from the point of view of the legality as well as procedural propriety. It was clearly mentioned in the CBI report in the matter of allotments of shops /stalls that the "allottees had been selected, not by following the tender system, as required by the policy of 1994, but because of their relationship with the Minister or her personal staff." Therefore, the allotments were wholly arbitrary and speak of misuse of power. In Capt. Satish Sharma's case all the 15 allotments were made in favour of his personal staff<sup>8</sup>, their relations and politicians on wholly extraneous considerations. It was observed by the Court that all these allotments are wholly arbitrary, nepotistic and motivated by extraneous considerations."

In both the cases, yet another important question before the Court was that what is required to be done to undo the wrong and how the wrong doer is to be dealt with within the parameters known to law.

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<sup>6</sup> (1996) 6 SCC 558 and (1996) 6 SCC 599

<sup>7</sup> (1996) 6 SCC 558 at P. 561

<sup>8</sup> 1 bid. P. 562

The Court found the answer to the first part of the second question in ordering the cancellation of the allotments and to the second part of the question, the Court applied the principle of personal accountability and imposed exemplary damages of Rs. 50/- lakhs to Capt. Satish Sharma and Rs. 60/- lakhs to Smt. Shiela Kaul, to be personally paid to the Government Exchequer within nine months by both the Ministers, failing which the amount shall be recoverable as arrears of land revenues.

### **Emerging Principle of Public Law and Implication for Public Accountability.**

#### **(1) State Largesse**

It was emphasised by the Supreme Court in Capt. Satish Sharm's case which was followed in Smt. Shiela Kaul that the Government today, in a welfare state, provides large number of benefits to the citizens, It distributes wealth in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases; contracts, quotas and licences etc. Government distributes largesse in various forms. A Minister is the executive head of the department concerned and holds a trust on behalf of the people. At the time of distributing these benefits and state largesses, he has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people. The petrol pumps, gas agencies, shops and stalls are the wealth which the government must distribute in a bonafide manner and in conformity with law.

#### **(2) Discretionary Quota**

In distribution of state largesses, even though discretionary, the discretionary power of the concerned authority must be exercised in accordance with the established procedure/criteria and on relevant considerations and with bonafide intention. The discretion must not be exercised on extraneous considerations, arbitrarily, nepotistically and unfairly. Therefore, the exercise of discretion must be transparent, just, fair and non-arbitrary. It was also observed by the Supreme Court that the non-transparency in the exercise of discretionary power promotes nepotism and arbitrariness. Even while acting within the guidelines, authorities cannot enjoy absolute discretion to pick and choose in arbitrary and discriminatory manner. Absolute discretion is an anathema to the rule of law and therefore, poses danger of serious order to the life, liberty and property of the individuals. It is also a threat to the democratic way of governance and finally to the constitutional democracy and development.

#### **(3) Misfeasance in Public Office**

The abuse of public office by public servant while exercising discretionary power in granting state largesse in an arbitrary, unjust, unfair, and malafide manner would invite personal liability to the wrong doer. The Court applied the principle of Misfeasance in public office as one of the recognised parts of the law of tort for personal liability even to the Minister, who is in a position of a trustee in respect of the public property under his charge and discretion. The Ministers are under legal and moral

responsibility to deal with people's property in just and fair manner, failing which they would be liable for criminal breach of trust.

The Supreme Court in **Lucknow Development Authority Vs. M.K.Gupta**<sup>9</sup>, had approved the concept of "Misfeasance in public office" as a part of the law of tort. The same principle has been relied in these cases and it was observed that "it is high time that the public servants should be held personally responsible for their mala fide acts in the discharge of functions as public servants." Public servants may be liable in damages for malicious, deliberate or injurious wrong doing. If a public servant abuses his office either by an act of omission or commission, and the consequences of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say "you may set aside an order on the ground of malafide but you cannot/ hold me personally liable. No public servant can arrogate to himself the power to act in a manner which is arbitrary". The Court in Capt. Satish Sharma Case relied upon the judgment in **Nilabati Behera vs State of Orissa**<sup>10</sup> and also referred to **Rookes Vs Barnardzi**<sup>11</sup> and **AB vs. South West Water services Ltd**<sup>12</sup>. and held that " we are of the view that the legal position that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable" and the same principle was applied with approval in **Shiela Kaul's Case**". In addition CBI was directed by the Court to register cases after investigation against **Capt. Satish Sharma and Smt. Shiela Kaul**, the then Ministers without being influenced by the observations made by the Supreme Court in these cases.

## VI. Role of Obudsman

Institution of Ombudsman is a symbol of democratic government<sup>13</sup> because it adds value to the democratic way of governance. Ombudsman according to Caiden, is an institutionalised public conscience - the essence of what government ought to do; that is to cultivate the well being of the citizen; the preservation of individual liberty and equitable treatment of all citizens by the public bureaucracy. Although the classical ombudsman is of ancient vintage with hallmark characteristics of independence, unimpeded access to information, power to investigate and opportunity to report to the legislature or assembly as opposed to the executive. In the age of human rights, this traditional mandate at the classical ombudsman, however, ostensibly shifted to the explicit promotion of citizens human rights. There must be a public interest defense against an Ombudsman investigation. The office of Ombudsman could be user-friendly and accessible. The task of the Ombudsman is to see, to the best of his ability, that all who hold authority retain a sense of responsibility towards the individual citizen.

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<sup>9</sup> (1994) 1 SCC 243

<sup>10</sup> (1993) 2 SCC 746

<sup>11</sup> 1964 AC 1129

<sup>12</sup> 1993 Q.B. 507

<sup>13</sup> VI International conference of Ombudsman, October 20-24, 1996, Argentina.

The objectives of the Ombudsman are to improve the quality of administration and to provide a mechanism for individuals to obtain redress efficiently and effectively. The office of the Ombudsman originated in Sweden in 1809 and adopted by many countries. New Zealand 1962, Finland 1919, Denmark 1954, Norway 1962, United Kingdom 1967, Canada 1967, Guyana 1965 just to mention a few.

For India, Ombudsman - Lokpal and Lokayuktas means greater accountability of administration and better access for the common man to grievance resolution. It should be seen as a part of the total drive for the defeudalisation of the administrative culture and making it more responsive, responsible, citizens caring and friendly. The institution needs to develop as a flexible friend of public bureaucracy and protection of the rights and interests of the people. The peculiar value of the Ombudsman that it can inquire into systems failure; he should point out tomorrow's standards today. He should recommend changes in administrative practice and even to recommend changes in law and procedures in the interest of promoting Rule of law values.

The 1960s and 70s versions of Ombudsman were primarily directed to remedy injustice caused as the result of maladministration or a 'failure of administration'. It should be remembered that maladministration is having direct implication on quality of governance in any society or system of governance. It should, however, be remembered that the Ombudsman were not courts of law, did not substitute their decisions for those of the Minister or his appointee, but were primarily concerned to ensure that his executive did not behave in a high-handed fashion or without due regard to the sensitivities of citizens. In due course of time many Ombudsman have turned into the advocates of 'good administration' or proper administrative conduct. In recent years, many Ombudsman have begun to vindicate collective or community rights and others to ensure the maintenance of human rights standards and also ensuring environmental protection as a common and collective wealth with a view to ensure sustainable development so that future generation should not have a cause to complain. The Ombudsman is an idea whose time has come and who is proving to be an important adjunct to the array of powers normally associated with the 'rule of law and public accountability'.

## **VII. Concluding Remarks**

It would be an appropriate to say that the institution of Ombudsman is not the *panacea* of all the ills prevailing in the society. However, its important role in view of the cross generational challenges arising from a changing demographic structure cannot be denied. The institution of Ombudsman, like other institutions, is a flexible and adjustable concept intended to accommodate and adjust with the changing situations and circumstances and respond positively to the challenges of change. Ombudsman should not become redundant is the duty of the national government and all the stakeholders including organizations of civil society and people at large. Given the opportunity, the



## Plenary Session 1

institution of Ombudsman will prove to be the important adjunct to the system of governance and contribute to the demand of challenges of changes in a changing demographic structure.

Demographic structural changes coupled with rising consumerism, waxing desire, quality goods and services, value for money, human rights protection and environmental concern etc; are additional factors contributing to challenges of change. It can strengthen democratic values and protect and promote constitutional democracy and its legitimacy. It can innovate and promote code of good administrative practices to promote ethics in public life by reviewing and restating the existing one. Its role in the area of human rights protection and also environmental protection for sustainable development are well recognized in some of jurisdictions. The success of Ombudsman in any society finally depends on the support and willingness of the government, public services, organizations of civil societies and people at large. It was important in the past, is important in the present and its importance will not deminish in the future also.