

Ombudsman : An Aid to Transparent and Accountable Government

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Concept and Meaning of Ombudsman

Ombudsman literally and in all practical sense, connotes the Swedish term for the public officer entrusted with the power to investigate public grievances. In the British system Ombudsman is a special commissioner appointed to receive complaints, and to seek a remedy of the complaint if justified. ⁽¹⁾ Wade describes it 'as a commissioner who has the duty of investigating and reporting on citizens' complaints against the government.' ⁽²⁾ Ombudsman is someone who holds national public office, who has responsibility for investigating complaints against actions of official authorities and who is vested with adequate powers to enable him to look at these complaints in depth. ⁽³⁾ The Ombudsman is an independent government official who receives and investigates complaints against administrative agencies and their officials and who, if the complaints are justified makes recommendations for the correction of the matter complained about and for the provision of adequate remedies ⁽⁴⁾.

By all practical reasons, an Ombudsman is an institution provided for by the constitution or by action of the legislature or parliament and headed by an independent, high level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion and who has the power to investigate, recommend corrective action, and issue reports ⁽⁵⁾.

Although the system is modeled after the Swedish system, the institution of Ombudsman has been replicated with different nomenclature in different countries. It is called Riksdagens Ombudsman, popularly known as JO in Sweden; Parliamentary

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Commissioner for Administration in Britain; La Defensor del Pueblo in Peru; Wafaqi Mohtasib in Pakistan, Lokayukt in India and so on. According to a listing of the International Ombudsman Institute, the Ombudsman systems have already been functioning effectively in more than 56 countries and many are in the offing.

Under the treaty of European Union and instituted by the Statute of the European Ombudsman, the office of the European Ombudsman was established in 1994 to deal with the complaints concerning mal-administration by EU authorities. In the Andean region, Bolivia, Columbia, Peru and Ecuador have already established the Ombudsman systems and there are legal and constitutional provisions to incorporate this institution in Chile, Ecuador and Venezuela. In all the continents, the institutions of Ombudsman are either effectively functioning or are in the offing.

Ombudsman Offices- Worldwide : Nomenclature

The word 'Ombudsman' is of Swedish origin and means 'representative'; Many other names are used to represent the ombudsman office in the different countries that have adopted this system. For example, Defensor del Pueblo is the title of the ombudsman offices for a number of Spanish-speaking countries (Spain, Argentina, Peru and Colombia). Parliamentary Commissioner for Administration (Sri Lanka, United Kingdom); Mediateur de la Republique (France, Gabon, Mauritania, Senegal); Volksanwaltschaft (Austria) Protecteur du Citoyen (Quebec); Provedor de Justica (Portugal); Difensore Civico (Italy); Investigator-General (Zambia); Citizen's Aide (IOWA); Wafaqi Mohtasib (Pakistan); and Lokayukt (India) are the titles of some other ombudsman systems around the world. The following indicates the nomenclature of the ombudsman in different countries:

Country	Nomenclature	Nature of government
Argentina	<i>Defensor del Pueblo</i>	Republic
Australia	<i>Ombudsman</i>	Commonwealth Nation, Democratic Federal State system. Ombudsmen are appointed at both levels.
Belgium	<i>Commissaire du Parlement</i>	Democracy under Parliament Constitutional Monarch.
Canada	<i>Ombudsman Le Protecteur du Citoyen (in Francophone setting)</i>	Commonwealth nation, Confederation with Parliamentary Democracy. Ombudsmen are at provincial level only.
Denmark	<i>Ombudsmand</i>	Constitutional monarchy
Fiji	<i>Ombudsman</i>	Commonwealth nation, Republic.
Finland	<i>Ombusman</i>	Republic
France	<i>Le Mediateur</i>	Republic
Hong Kong	<i>Ombudsman</i>	Special Administrative Region of the People's Republic of China
India	<i>Lokayukta</i>	Commonwealth nation, Federal Republic, Ombudsman operate in 12 states and legislation for a Federal Ombudsman termed Lok Pal is planned.
Italy	<i>Defensore Civico</i>	Republic
Japan	<i>National Counselors responsible to a Ministry</i>	Imperial Monarchy with Parliamentary Democracy.
Korea	<i>Ombudsman</i>	Democracy
Macau	<i>High Commissioner against Corruption and Administrative Illegality</i>	Overseas territory of Portugal (to be Special Region of China in 1999)
Netherlands	<i>Ombudsman</i>	Parliamentary Democracy under a Constitutional Monarch.

Country	Nomenclature	Nature of government
New Zealand	<i>Ombudsman</i>	Commonwealth nation Parliamentary Democracy
Norway	<i>Ombudsman</i>	Hereditary Constitutional Monarchy
Pakistan	<i>Wafaqi Mohtasib</i>	Commonwealth nation, Islamic Republic
Papua New Guinea	<i>Ombudsman Commission</i>	Commonwealth nation, Independent State with Parliamentary Democracy
Philippines	<i>Tanodbayan</i>	Republic
Portugal	<i>Providor de Justica</i>	Republic
Samoa	<i>Sulufaiga, Ombudsman</i>	Independent State
Solomon Islands	<i>Ombudsman</i>	Commonwealth nation Parliamentary Democracy
Spain	<i>Defensor Civico</i>	Constitutional Monarchy
South Africa	<i>Public Protector</i>	Republic
Sri Lanka	<i>Ombudsman</i>	Democratic Socialist Republic
Sweden	<i>Ombudsman</i>	Constitutional Monarchy
United Kingdom	<i>Parliamentary Commissioner for Administration</i>	Commonwealth nation, Constitutional Monarchy, Parliamentary Democracy
Vanuatu	<i>Mediateur Abujman Ombudsman,</i>	Republic

Relevance to Good Governance for Transparency and Accountability

Governance is a mechanism through which the relationship between governed and who govern is expressed. Good governance is characterized by an accountable government at the top, an independent judicial system, freedom of thought and expression,

and above all, freedom of choice for its citizens. Good governance implies a situation that encourages:

- Predictable, open and enlightened policy making;
- Bureaucratic efficiency, accountability and transparency;
- Spontaneous participation of the civil society in public affairs;
- Protection of human rights, and
- Freedom of media.

Escalated power of the executive branch is one of the common features of modern-day governments because of the spread of their activities over many areas which, so far were regarded as 'outside their concern'. Generally, they have done so in response to public pressures. With the rapid expansion of government, citizens have gained access to a wide range of government services and support system, but they have also become increasingly vulnerable to the decisions of civil servants. The growth of government has therefore been accompanied by an increasing concern about the need to protect individual rights, particularly as it has become clear that the efficient and fair-minded operation of vast administrative structure is not easily achieved. Mistakes, whether caused by administrative managerial shortcomings, inadequate information, faulty interpretation of known facts or lack of sensitivity to personal circumstances, can do happen.⁽⁶⁾

The need to promote public accountability in the public service is another factor that necessitated the establishment of the Ombudsman. The idea of holding public officials answerable and ultimately removable for their conduct of public business is fundamental to all governments⁽⁷⁾.

If the public comes to believe that all public institutions are being run by self-interested bureaucrats beyond public control and accountable only to their narrow organizational perceptions of the public interest, and that no public leaders seem to care or do anything to restore public responsibility, then it will evidence apathy, cynicism and anarchy.⁽⁸⁾ If the public confidence and trust in

government continues to be undermined, the people will become ungovernable, unresponsive and unproductive and government will be forced to employ more coercion which will be of little avail ⁽⁹⁾. The ascendancy of politics over administration has meant that political leaders are now capable of using their power and the state machinery to foster a growing personalization of their authority.⁽¹⁰⁾

There is a great necessity and urgency to increase public accountability through a wider range of both internal and external controls. This is no longer a matter of determining what already works but also of experimenting with innovations that limit the independence and autonomy of public officials without unduly handicapping their freedom of action, that reduce the privatization of government without restricting individual privacy, that minimize the occurrence of public wrong doing without intensifying bureaucratic pathologies, that increase the public's confidence in public institutions without criminalizing public affairs ⁽¹¹⁾.

Another phenomenon of having ombudsman is that the existing parliamentary procedures and judicial processes have their limitations. That is why there is need for alternative institutions to attend the aggrieved citizen. The ombudsman is a system being considered as quick moving, inexpensive, uncomplicated, independent and impartial as well as significant factor from political considerations.⁽¹²⁾

Relevance to Parliamentary and other Forms of Governments

The accountability of the administration to parliament has been severely strained by the complexity and diversity of the bodies making up the welfare states. Parliament has been required to delegate broad powers and broad discretion to literally innumerable tribunals and commissions, in addition to its numbers large and cumbersome departments.⁽¹³⁾ Moreover, limitations of traditional institutions i.e. Legislature and Courts or redressal of citizens' grievances paved the way for Ombudsman.

Naturally the legislature is less suited to deal with individual grievances. The lengthy procedure of parliamentary deliberations

as well as inclination of party or political arguments are very much time consuming factor.

The administration of so many services and controls under the vast bureaucratic machinery of the government inevitably causes many grievances and complaints. If something illegal is done, administrative law can supply a remedy, though the procedure of the courts is too formal and expensive to deal many complains. Justified grievances may equally well arise from action which is legal, or at any rate not clearly illegal, when a government department has acted inconsiderately or unfairly or where it has misled the complainant or delayed his case excessively or treated him badly. Sometimes a statutory tribunal can be of significant help both in terms of cost and convenience. But there is a large residue of grievances which fit into none of the regular legal methods. A humane system of government must provide some ways of assuaging them, both for the sake of justice and because a accumulating discontent is a serious clog on administrative efficiency in a democratic country.⁽¹⁴⁾

The institution of Wafaqi Mohtasib (Ombudsman) has been established in Pakistan to institutionalize a new mechanism for redressing injustice done to citizens by public functionaries ⁽¹⁵⁾ The institution of Wafaqi Mohtasib has its foundations in the Islamic concept of accountability. Accountability is the cardinal feature of Islam, the very spirit of faith. The Wafaqi Mohtasib Act implicitly states that the edifice of this institution has been erected on the spirit of Islamic norms of justice and accountability and their practical manifestation in the early Islamic polity.

Nonetheless the Institution of Wafaqi Mohtasib (Ombudsman) in Pakistan can be compared with contemporary Ombudsman systems developed in the West. It possesses a unique complexion of its own phenomena as well as western concept of ombudsman originated in Scandinavia.⁽¹⁶⁾ It sought to set up a system which combines judicial impartiality, adequate investigative capability, pragmatic flexibility in its procedures and professional insight into the labyrinth of the modern administrative structure.⁽¹⁷⁾

Swedish Model

The institution of Ombudsman is a Swedish origin. It is one of the oldest institutions to guarantee and help aid good governance. Rule of Law has been an outstanding factor in the Swedish Constitution. One of the important statements 'Public power shall be exercised under law' enumerated in the first article of the first chapter of the Swedish Constitution, has been the basis of rule of law in Sweden. This is merely not a statement but a transformed reality in Swedish case since the very first written Swedish Constitution from the Medieval period.⁽¹⁸⁾

Sweden is a constitutional monarchy with all powers vested in people. The constitution of 1809 is the oldest written constitution in Europe and in 1975 a new constitution came into force. The Swedish Constitution is based on three constitutional documents or Acts popularly known as fundamental laws. These are a) the Instrument of Government, b) the Act of Succession and c) the Freedom of the Press Act. The Riksdag (Parliament) Act is not considered as fundamental law.

In accordance with the principle of parliamentarianism, the Riksdag Parliament is the foremost representative of the people. The Government rules the country, but is answerable to the Riksdag. If the Riksdag declares that a Minister no longer enjoys its confidence, the Minister shall be discharged.⁽¹⁹⁾ The Riksdag enacts the laws, determines taxes and decides how public funds are to be used. The Riksdag scrutinizes the workings of the Government and the administration of the country.⁽²⁰⁾ The Parliamentary Ombudsman constitute an important and well-known instrument utilized by the Riksdag in its scrutiny of the administration. The Parliamentary Ombudsman is elected by the Riksdag, and it is his duty to supervise in accordance with instructions laid down by the Riksdag the application in public service of laws and other statutes.⁽²¹⁾

The Riksdag has laid down that it is the parliamentary Ombudsman's job to supervise:

civilian and military central government authorities (including COWI:s) ; municipal authorities; officials and others holding posts with these authorities, and others holding posts or performing commissions or contracts that involve the exercise of authority.⁽²²⁾

Sweden is a unique example where rule of law is exercised in absolute terms and the ombudsman system has proven to be the major factor for its transparent and accountable government. The Swedish ombudsman, as an excellent model, could be replicated by other countries of the world at least for the sake of transparent and accountable government.

Bangladesh Scenario

Bangladesh is a Parliamentary democracy. The Prime Minister, as head of the government is constitutionally responsible for managing the state. While implementing the decisions of the government it is necessary to see whether those actions are in consonance with the laws of the land and here comes the question of accountability.

Bureaucracy is one of the important actors in the government of the state. Bureaucrats are influential by virtue of holding permanent jobs, for having a role in policy making and programmes implementation and having control over the financial and material resources of the country.

A bureaucratic system owes its allegiance to the people and works its interests can prevent all forms of excesses. It can turn to be conducive to democracy and to the democratization of the economy. The normal process for making them accountable is that they be subjected to strict enforcement of service rules and other punishment for bad performance.

Article 77 of the constitution of the People's Republic of Bangladesh provides the conditions that there would be a constitutional post of Ombudsman to handle the administrative grievances. The Ombudsman Act 1980 (Act 15 of 1980) enacted by the parliament has categorically indicates the legal provisions and modalities of the ombudsman system. In spite of having the constitutional and legal provisions the institution of ombudsman has not yet been established in Bangladesh.

There is widespread concern about government performance, and a perception that accountability measures and institutions are neither sufficiently transparent nor adequately strict to ensure effective, fair and efficient policy and programme implementation. ⁽²³⁾

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, Ordinances, rules and regulations; and arbitrary decisions are the major impediments to good governance in Bangladesh.

Country like Bangladesh, which has a powerful bureaucracy needs to have an impartial, neutral, legal institution i.e., the ombudsman. The institution of ombudsman can oversee the bureaucratic excesses and administrative grievances of the public. What Bangladesh needs to emphasis is the institutionalization of the system and not the person. If the ombudsman system is institutionalized there would be less sycophancy and better management of the institution of the ombudsman.

Conclusion

Many countries have adopted various methods and means to deal with grievances and complaints of their citizens against government practices and other public authorities. These countries may rely on having the complaints brought up directly to the official establishments or ministries concerned, or through administrative courts, attorney general, public prosecutors, appellate boards, parliamentary representatives or committees and

other persons or bodies including private agencies as well as the press. However, none of these methods or means proved to be capable of carrying out the functions and responsibilities of the ombudsman in the best interest of the people for various reasons.⁽²⁴⁾ It is almost an accepted and settled fact that the ideal form of ombudsman should exhibit the following principle characteristics:

Be legally established; be functionally autonomous; be external to the administration; be operationally independent of both the legislature and the executive; be non-political; be sympathetic to the citizens but not adverse to the administration; be freely accessible; and be given unlimited access to the documents bearing relevance upon the decision in question.⁽²⁵⁾

The constitution of Bangladesh provides for an ombudsman as part of its built-in system for transparency. But successive governments since independence did not appoint such an ombudsman.

This vital institution, which is essential for proper governance has not been established even in three decades since the constitution was framed. The ombudsman if appointed would bring justice to the doorstep of the people. To ensure accountability of the members of parliament and public servants, ombudsman as provided by the constitution is necessary.

In 1980 the government passed an act for installation of an ombudsman and after 22 years on January 6, 2002 the coalition government brought the act into force through a gazette notification. However on February 11 2002 the law ministry proposed to the cabinet for amendment to some provisions of the act which in turn formed a committee to scrutinize the bill. Since then no one knows what has happened to the bill.

The institution of ombudsman is by no means an artificial organism. It is reality sprung out of a great experience and after much trial and error. It is the result of much toil, much patience and continued effort for a sound and honest application of the rule of law and the safeguard of the dignity of man and his basic rights.⁽²⁶⁾

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