



Comparative Study of Ombudsman in Sweden, U.S, U.K, Scotland with special reference to India

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Abstract

Each government consists of three organs. The three branches are the Executive, the Legislative, and the Judicial. Government services are regulated by the executive, laws are made by the legislative, and the judiciary's job is to interpret the laws. The executive further assigns some administrative authority with day-to-day responsibilities. There are just a few organizations that are designated as administrators to examine whether the laws are serving their intended purpose if individuals are abiding by the law, or whether the administrators are carrying out their tasks as required. Fairness and accountability are crucial for preserving the public's and citizens' faith in the government. There is a body called the Ombudsman that assesses the performance of administrators who are responsible to either the general public or to individuals. The goal of this research paper is to introduce the office of the Ombudsman, its duties, its rate of success, and the potential for improving its operation. To better understand the importance of the office of the ombudsman, a study has been done on the formation and operations of ombudsmen in Sweden, the United States, the United Kingdom, Scotland, and India. The secondary data were used by the researcher to complete this study.

Keywords: Riksdag, Complaints, Investigation, Maladministration, Lokpal, Redressal.

Introduction

Let's first define the term "ombudsman" before moving on to the matter. In general, the ombudsman may use the term "public advocate" to represent issues involving public rights and to investigate cases of improper management. He was chosen by the nation's government or legislature. The idea of an Ombudsman was first introduced in Sweden in 1809 and quickly gained popularity around the globe.

Any system with effective management must be accountable and quick to respond to the needs of the populace. The impersonal bureaucratic system adventure or adventure has been shown to try to overcome the "small man" in history.¹

The term "Ombudsman" or a similar position has been integrated into the machinery of modern administration. All nations are transitioning from laissez-faire to regulation in the twenty-first century. Therefore, organizations like the ombudsman are essential in defending members of the underprivileged population against administrative errors.

¹ Hayes, A. (2022) *What an Ombudsman does, types, Pros & Cons, Investopedia*. Investopedia. Available at: <https://www.investopedia.com/terms/o/ombudsman.asp> (Accessed: October 26, 2022).

Object of Study

To better comprehend and do an in-depth study on the issue, the researcher wants to provide readers a glimpse into the "Comparative Study of Ombudsman in Sweden, the United States, the United Kingdom, and Scotland with Special Reference to India." It aims to draw the reader's attention to the institution's historical background, its initial introduction to the world and India, as well as the current state of that institution in light of the various scholars' and lawyers' various interpretations and in-depth justifications, to foster a thorough understanding of the various facets involved in this institution of Ombudsman.

- 1) Consequently, the main goals of this study report would be:
- 2) To provide insight into the Ombudsman's intent and concept.
- 3) To understand the origin and rapid growth of the Ombudsmen.
- 4) To examine the connection between the citizens, the government, and the Ombudsman.
- 5) To comprehend the many components and structures necessary for the Lokpal and Lokayukta in India to function.

Research Methodology

While largely concentrating on qualitative ways of investigation, the researcher will employ both quantitative and qualitative methods of study and analysis. The information used in this article, including the facts, analyses, rulings, statistical data, and legislative provisions, was gathered from several trustworthy websites, comments, publications, and legal rulings. For greater clarity and comprehension, a little section of the means used will also be taken from other relevant publications and journals.

Research Question

1. What does the term "Ombudsman" mean?
2. Where does the Ombudsmen originate and how it developed in the civilized world?
3. What duties are fulfilled by the Lokpal/Lokayukta?

Literature Review

1. The Lexis Nexis commentary "**Principles of Administrative Law**," written by **M.P. Jain** and **S.N. Jain**, is a really thorough commentary on the principles of administrative law that greatly aided in understanding the ins and outs of administrative powers and actions as well as how irregularities in those actions can be corrected. Additionally, the idea of bad administration and its remedies were covered in detail. The principles that were clarified with the aid of a sizable number of case laws proved useful in comprehending the goals and methods of the Ombudsman, known at the federal and state levels, respectively, as Lokpal and Lokayukta.
2. The researcher was greatly assisted in comprehending the complexities involved in the relationship between the judicial system and Ombudsman, specifically dealing with the issues related to the same in recent years, by the book "**Administrative Law: Text and Materials**," written by **Mark Elliot**, edited by **Jack Beatson** and **Martin Matthews**, and published by Oxford University Press. This book

also outlines the idea of an ombudsman in terms of both political and legal considerations, informing the readers on a variety of different facets of the idea. In addition, it described the genesis of the Ombudsman idea in the United Kingdom. It aided the researcher in clarifying the necessity for and function of the Ombudsman in the ongoing study endeavor.

3. The researcher was able to better understand the foundations of administrative law with regard to governmental powers and functions thanks to **Neil Hawke's** book "**An Introduction to Administrative Law**," which was published by Aditya Books in New Delhi. The book also focuses on the effectiveness of administrative control mechanisms. The researcher also gained a better knowledge of the nature of illegal administrative activities and the viable defences thanks to this book.

Origin and Position of Ombudsmen in the following countries

1. Sweden

King Charles XII in 1713 spent almost 13 years in Turkey, and as a result of his absence, his government crumbled. He formed the "Supreme Ombudsmen" to conduct appropriate governance. This individual is responsible for making sure that everyone, including judges and the general public, complies with the law as it is being implemented and carries out their tasks.

The title of "Chancellor of Justice" is changed to "Supreme Ombudsmen" in 1719. Even now, the Chancellor of Justice's office serves as the government's Ombudsman. The Riksdag appointed the chancellor of justice in 1766. The highest legislative body in Sweden is known as the Riksdag. Making legislation and establishing the federal budget are among its responsibilities². The activity of the government is also examined by the Riksdag. The authority to choose the chancellor of justice was once more given to the royals in 1772. It was eventually disposed of in 1809 due to expansion and development under Gustav III and Gustav Adolf IV.³

Between the King and the Riksdag, authority and instruments were split in 1809. The ombudsmen have been split into two as a result. While the Riksdag would pick the parliamentary ombudsman, the monarch was supposed to appoint the chancellor of Justice. The parliament's ombudsmen must uphold and defend the rights of the people through a fully independent executive oversight body.

The restriction that only men could be chosen as ombudsmen in 1941 was lifted, and five women have subsequently been elected to the position. The parliamentary ombudsman was given the authority to oversee

² Penn Carey Law: Legal scholarship repository (no date) Site. Available at: <https://scholarship.law.upenn.edu/> (Accessed: October 26, 2022).

³ Eklundh, C. (2001) *The Swedish Parliamentary Ombudsman System*, Brill. Brill Nijhoff. Available at: https://brill.com/view/book/edcoll/9789004481930/B9789004481930_s029.xml (Accessed: October 26, 2022).

local government bodies in 1957. The decision to eliminate the unique privilege to waive prosecution in 1975 was made concurrently with a reform of official accountability that included, among other things, a significant reduction in the legal liability of public officials. It was decided that the parliamentary ombudsmen's ability to forego prosecution was no longer necessary in this situation. The ombudsmen were instead required to follow the rules that previously applied to public prosecutors regarding prosecution and the ability to forego prosecution during case inquiries.

By the 1989 revisions and the Act with Instructions for the Parliamentary Ombudsmen (1986:765), the ombudsmen must now follow all other legislative rules that apply to public prosecutors while acting in the capacity of the prosecutor. The specific provision that allowed the ombudsmen to provide critical or advisory remarks was part of the 1975 instructions as well, and it has been carried over to the current instructions.

Today, anybody who has reached the age of complaint, regardless of citizenship, may file a complaint with the Ombudsman. However, it lacks authority over the Riksdag, the executive branch, cabinet ministers, the Chancellor of Justice, or members of the county or particular cabinet ministers. However, these are regulatory bodies like the Swedish Press Council.

Ombudsman is elected for 4 years and can be re-elected. The initial requirement for ombudsmen is legal training. The ombudsmen do not need too formal requirements to be a jurist.⁴

The Parliament Ombudsman and Riksdag currently have autonomous positions since the Riksdag does not intervene in specific instances and is not consulted when making decisions. No political involvement is allowed in the work of the parliament ombudsman, and to ensure this, the Riksdag allocates the funds for the position rather than Sweden's Ministry of Finance.

2. The United States

Although there aren't many ombudsmen in the US unified who are just assigned to one region or one service, this is simply because they don't exist.

In the US, there is no one government ombudsman service. US Members of Congress address federal agency complaints in an unofficial capacity.

Here are several ombudsmen offices or departments that operate on a service basis.

Internal Revenue Service

It is a taxpayer-funded ombudsman service. In 1979, the Office of the Taxpayer Advocate was established. Its responsibility is to submit the Treasury Department's report to the US Congress without

⁴ *Parliamentary ombudsman* (2022) Wikipedia. Wikimedia Foundation. Available at: https://en.wikipedia.org/wiki/Parliamentary_Ombudsman (Accessed: October 26, 2022).

consulting the Office of Management and Budget, the IRS Commissioner, the Secretary of the Treasury, or any other official or employee of the Department of the Treasury.⁵

Department of Homeland Security Citizenship and Immigration Services Ombudsman

The first Ombudsman for the Citizenship and Migration Services, Prakash Khatri, served from 2003 to 2008. In its 4 reports to Congress, he made 70 suggestions for enhancements at USCIS. This panel must make recommendations and handle issues relating to employee and employer issues with USCIS.⁶

Department of Homeland Security Office of the Immigration Detention Ombudsman

The Office of Immigration Confinement Ombudsman (OIDO) of the U.S. Department of Homeland Security assists detainees with complaints regarding the government's jail detention. The Electronic System for Travel Authorization (E-Verify) program, which aids American authorities in ensuring that foreign nationals are in the country lawfully, is also under the control of OIDO. Similar to this, OIDO has the authority to carry out unannounced and announced inspections of contractor-managed ICE detention facilities. It also reviews contract provisions, such as paying for custody services for discretionary custodial removal, and it offers impartial oversight to address any issues by looking into complaints and ICE-related contract decisions.

Department of Education

The Department of Education has a site called the U.S. Department of Education Independent Loan Ombudsman. The agency is solely formed to provide unbiased advice and information about federal student loans to borrowers that are having problems or are having questions or issues from an impartial, independent viewpoint.

There are a few more Ombudsmen at Federal Level; such as Environmental Protection Agency, Food and Drug Administration, and the United States Navy.

There are few state-level ombudsmen such as State children's ombudsmen, State Long Term Care Ombudsmen, and many more.

⁵ Home: Internal Revenue Service (no date) Internal Revenue Service | An official website of the United States government. Available at: <https://www.irs.gov/> (Accessed: October 26, 2022).

⁶ Office of the citizenship and immigration services ombudsman (no date) Office of the Citizenship and Immigration Services Ombudsman | Homeland Security. Available at: <https://www.dhs.gov/topics/cis-ombudsman> (Accessed: October 26, 2022).

3. United Kingdom

Ombudsman was commissioned in 1954 to deal with complaints filed against government agencies or officials. Ombudsman first emerged as a formal office in 1951. The idea to create the office came from the experience of maladministration and grievances caused by the actions of certain government agencies. The Crichton Down affair is an example of this. During World War II, about 725 acres of land were taken from British farmers to be used by the military. The amount of land was repressed, and British people were promised that it was to be returned to the owners.⁷ However, the land which was to be returned to farmers was given over to the Agriculture Ministry. A report published by the International Commission of Jurists states that “Turbulent and common flows, often not sufficient themselves to attract sufficient public concern, turn out to be serious injustices for some individuals, which frustrate or distress them. This injustice becomes infamous and often leads to sympathy for those in the hot seat, and resentment towards the authorities who can and should prevent such injustices.”

The Parliamentary Commissioner Act of 1967 (PCA, 1967)⁸ was adopted so that the Parliament will have a commissioner to deal with the administrative details of proceedings of the Parliament.

1. Around law enforcement bodies, look into the complaints made by citizens.
2. They design policies to redress the gap and act as experts
3. Registrars are free to access ombudsmen
4. Fastest resolution without being unbiased
5. Every year, it reports to the Abbott government concerning its educational performance. Included in these reports are tables that state the work they produced, their statistics, and their method to solve the problem. Apart from these duties, they place an annual publication containing the recommendations for the system itself. Lacking any internal remedy for this problem, and occasions of claims for their remedies, there can be a judicial review of the findings of the Ombudsman.

4. Scotland

The concept of ombudsmen was introduced in Scotland by Scottish Public Services Ombudsman Act (SPSO), in 2002⁹

1. The members of the Scottish parliament are needed to resolve the problem.

⁷ *The crucial down affair* - JSTOR (no date). Available at: <https://www.jstor.org/stable/1090813> (Accessed: October 26, 2022).

⁸ Participation, E. (1988) *Parliamentary commissioner act 1967*, *Legislation.gov.uk*. Statute Law Database. Available at: <https://www.legislation.gov.uk/ukpga/1967/13/contents> (Accessed: October 26, 2022).

⁹ *We are Scotland's ombudsman* (no date) SPSO. Available at: <https://www.spsso.org.uk/spso> (Accessed: October 26, 2022).

2. It provides the concept where the representative of the complainant with his/her permission can file a complaint
3. Complaints can be lodged in oral forms
4. It is compulsory to publish reports
5. The office of the ombudsman has the power to highlight the investigations done by them regarding unresolved cases, says its new policy

The Working of SO pulls the office together, but the mechanics of the delivery system leave something to be desired.

5. India

Ombudsmen are set up to investigate cases of administrative misconduct. We have different terms for this in India – Lokpal and Lokayukta. In India, we have an Act called Lokpal and Lokayukta Act, 2013. Although this Act came into force in 2013, it has been responsible for solving many cases of administrative malpractice. It was a result of the Administrative Reforms commission in 1966.

Dewang Mehta (1961–2003) became the first ombudsman (OV) in 1969. The Government of India made several recommendations on improving the working conditions of state agencies, which became known as The Santhanam Committee (SC) (1962–64, recommended by V.V. Santhanam). The SC suggested the establishment of an independent institution for lodging consumer complaints in various sectors. The Government of India pressed for state-level ombudsmen (OVs). They would have jurisdiction over state-level agencies.¹⁰

Lokpal

An anti-corruption ombudsman or "People's Friend" in the Republic of India protects the public interest in the long run. Since 2010, the People's Republic of China has had an ombudsman or Public Prosecutor General who prosecutes corruption in the country. The Republic of India has an anti-corruption body, the Lokpal, designed to protect the public against corruption by investigating allegations against public officials, particularly at the level of the Central Government.

The Lokpal acts at the national level, while Lokayukta, or local representative of citizens, works at the state level. The Lokpal chairperson or member should be at least 45 years old on the date of assuming office as a chairperson.

¹⁰ Drishti IAS (2019) *Lokpal and Lokayukta*, Drishti IAS. Available at: <https://www.drishtias.com/important-institutions/drishti-specials-important-institutions-national-institutions/lokpal-lokayukta-ombudsman-upsc-governance-transparency> (Accessed: October 26, 2022).

Need of Lokpal¹¹

1. Lokpal and Lokayukta are free bodies. ACB and CBI will be merged with these bodies. The capacity to start investigations against any public servant, without requiring anybody's authorization, will also become a reality.
2. Lokpal and Lokayukta have comprehensive powers to establish ownership, secure recovery, and order institutions of authority to prosecute in civil and criminal courts.
3. Justice Lokpal and Lokayukta will have the power to dismiss officers who are found guilty of corruption. Justice Lokpal and Lokayukta will have the authority to research and arraign any adjudicator who is not chosen by anybody.
4. After finishing of examination, the case records will be available open to open. The administration was a whole new world for a civil servant who grew up as a teleguide in an army camp
5. Lokpal and Lokayukta will get accused persons to be honorably punished for their wrong decisions, and levy them social reparation of Rs 250 every day if their resolution is taken in manifestly of unreasonable delay. They will be forced to take proper notice of cases and to settle them within eight days in every 25-day-long case, due to their inefficient legacy. Social violence should be prevented.

Lokayukta (at the State level)

The first state to establish one state-level Lokpal (ombudsman) was Orissa. In 1930, Tamil Nadu was the first state to create a Lokayukta (an anticorruption body). Other states followed: Bihar (1934), Uttar Pradesh (1952), Madhya Pradesh (1958), Andhra Pradesh (1963), Himachal Pradesh (1963), Karnataka (1967), Gujjarwal Pradesh (1972), Amarbhensia (1980), Delhi (1995), Punjab (1996), Nagaland (1997), Madhya Pradesh (1997), Assam¹²

Kerala is represented by Administrative Boundaries, where each block consists of 15-16 Assembly constituencies, a standing committee with a proposal, and a working committee with a proposal to be forwarded to the Assembly, under the Kerala Panchayat Federation Act. The Kerala Panchayat Act provides for specifications and directions to the Panchayat president, and Panchayat members to take action under various heads: administrative control, action in complaints, constitution,

¹¹ Ibid

¹² *Status of Lokayukta act in India* (2016) *The Law Blog*. Available at: <https://thelawblog.in/2016/12/18/status-of-lokayukta-act-in-india> (Accessed: October 26, 2022).

Conclusion

In current legal frameworks, there is no effective global legal system. Countries will continue to face challenges until there is a universal and implementable legal framework. When there is more transparency between all global bodies, this will improve administrative vulnerabilities. The biggest problem is that corruption prevention methods are not being employed; people are not aware of the superiority of these methods and still want to secure themselves the same way. As such, people must be vigilant to these methods and should take part in the process themselves. It should be noted that Lokpal can prevent corruption and should be spread among people.

Unlike Sweden, the U.S.A, the U.K, and Scotland India are at a developing stage where each government whether state or at the central level makes an ombudsman or appoints authorities similar to it. Like at the central level the rbi has its ombudsman similarly in the course of corruption the ombudsman's acting agency is Lokpal, on the other hand, there are state-level agencies such as Lokayukta, There are also similar kinds of programs in the state or district level such as CM Helpline, Mahopor Helpline, etc Since it is not only the government that has the function to run the government well but every citizen must utilize such agency for resolving such issues. We must file a complaint or FIR against such officials. In the current scenario, we don't have a law for corporate except for issues related to RBI and SEBI but the public sector or governing authority comes under such Ombudsmen.

At the last, my conclusion is my message to the readers of this research that it the high time to wake up for our nation, and together we and government can solve every issue speedily and fairly.

Suggestion

- 1) Agency like Lokpal and Lokayukta have a shortage of staff resulting in the low functioning of such agencies. An agency like ED CBI Police at the local level should coordinate or temporarily transfer to such agencies for the smooth running of such agencies.
- 2) Appointment of ombudsmen or its procedure should be transparent so that there shall be no misuse of power.
- 3) Awareness regarding the agency and its functions should be spread so that people at large may be aware. This includes advertisements, public speech, etc.
- 4) A strong recommendation is that the government draft a complete law with harsh penalties that might range from life in prison to a minimum of five years in jail. Only very seldom may someone receive the death punishment.
- 5) All public employees, including the Chief Minister and, most importantly, the Prime Minister, should be within Lokayukta's purview.
- 6) Fast Track courts should be available to finish cases in the allotted six months. Cases have to be monitored online. Every aspect of the case has to be checked out and made public.
- 7) Even private businesses and private people should be subject to certain strict anti-corruption legislation.

References

Books

1. "Administrative Law: Text and Materials," written by Mark Elliot, edited by Jack Beatson and Martin Matthews,
2. Neil Hawke's book "An Introduction to Administrative Law,"

Commentaries

1. LexisNexis commentary "Principles of Administrative Law," written by M.P. Jain and S.N. Jain

Website

1. <https://www.investopedia.com/terms/o/ombudsman.asp>
2. <https://scholarship.law.upenn.edu/>
3. https://brill.com/view/book/edcoll/9789004481930/B9789004481930_s029.xml
4. https://en.wikipedia.org/wiki/Parliamentary_Ombudsman
5. <https://www.irs.gov/>
6. <https://www.dhs.gov/topics/cis-ombudsman>
7. <https://www.jstor.org/stable/1090813>
8. <https://www.legislation.gov.uk/ukpga/1967/13/contents>
9. <https://www.spsso.org.uk/spso>
10. <https://www.drishtiiias.com/important-institutions/drishti-specials-important-institutions-national-institutions/lokpal-lokayukta-ombudsman-upsc-governance-transparency>
11. <https://thelawblog.in/2016/12/18/status-of-lokayukta-act-in-india>