



A descriptive study on ombudsman

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Abstract

The term ombudsman by the name itself suggests that this institution exists in the form of “grievance representative” or “entrusted person”. International Bar Association Ombudsman Committee stated Ombudsman as “An Office 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” Within the last century, the Swedish state in 1809, appointed an official known as the “Justitie” ombudsman to investigate upon peoples grievances and report back to Parliament. This idea was taken up and applies in some other parts of Scandinavia, in Finland in 1917 and in Denmark in the year 1954. In this paper we discuss the Ombudsman and its meaning along with the concept of ombudsman in different countries.

Keywords: ombudsman, grievance representative, parliament

1. Introduction

The concept of Ombudsman in accenting the modern era concerning the theory of Ombudsman, one deals with, by referring solely, models in India and China from as much back as 3000 B.C. The term ombudsman suggests that one thing within the nature of “grievance representative” or “entrusted person”

The foundation of doing this was to give the normal national some sort of redress and hearing to the ordinary citizen in a very easy, cheap and direct way once when purportedly dole out with adversely by the activities of an outsized and remote govt. bureaucracy.

Prof. Donald Rowat, formed for the International Ombudsman Institute in the year 1997 a paper called “A Worldwide Study of Ombudsman”.^[1] In that paper he used the term “original classical ombudsman system” in explaining ombudsman characteristics:

First, in order to safeguard its perpetuity, neutrality and freedom from the administrative organization being complained against; it is set up by a country’s constitution or by a law or by-law of the legislative body.

Second, it accepts and inquire grievances from the public against any portion of the entire administration at the level of government concerned, however in many systems it can also initiate inquiries of suspected maladministration on its own initiative;

It is to be discovered that the concept of ombudsman has grown quickly, effectually since the 1960s—the present range of nations ombudsman global being in over a hundred ninety operational offices in seventy two nations. In addition, the notion is one in all the few that has streamed from the public sector to the non-public or private sector, there being industrial sector ombudsman in many nations. Lastly what is referred to as the ombudsman sort of fact-finding and recommendatory approach has been used by variety of different connected agencies like the police grievances authorities and the human rights commissions.

2. Concept of Ombudsman

In a democratic set up, the welfare and satisfaction of people is of paramount consideration, but looking at the present scenario, the cries of the people go unheard and they become the victims of administrative vicious decisions or injustice and left unredressed. The main problem before the administrative system, therefore, is how to provide the citizen with an alternative institution with in the democratic framework which enjoys the confidence of the people and provides for better redressal mechanism. An urgent need for a watchdog over the government is necessary; the concept of ombudsman is the solution to the problem of maladministration and corruption.

The idea of such an institution which can look into the complaints of the citizens and redress their grievances emerged due to widespread corruption and mal administration in various government departments and due to the political instability of the country. Further, due to population explosion, the functions of the government are expanding day by day which in turn leads to the expansion of the discretion of the officials/ bureaucrats of these departments. With the advent of modern era, enhancement of governmental/ administrative functions has led to the growth of delegated legislation and due to the widening concept of delegated legislation, the problem of maladministration and corruption has reached its zenith and needs to be regulated by a complaint handling mechanism/ statutory control mechanism called ombudsman; which means a person/ representative of people/ commissioner who can handle complaints/ grievances against these government departments and other public bodies with full vigour and provide for their speedy disposal.

The need for this important institution is much more pronounced in the under developed countries of Asia. The institution of ombudsman or the parliamentary commissioner is gaining increasing recognition as a powerful instrument for redressing the citizen’s complaints arising from the callousness of the administrative machinery or the transgression by it of the individual’s rights. The institution is also useful in focusing attention on the improvement of administrative procedure

through continuous criticism of the working of the bureaucratic system as revealed in the inquiries instituted by the ombudsman on the citizen's complaints or even suomoto.

3. Meaning of Ombudsman

Etymologically the Swedish word 'ombud' refers to a person who acts as a spokesman or representative of another person. In Swedish public law, however, Ombudsman means an appointee of the Parliament of Sweden for the supervision of the administration. It is in the Swedish sense the word ombudsman has been commonly used. *Ombudsman* is from Sweden, a Germanic language in the same family as English, and *man* in Swedish corresponds to our word *man*. *Ombud* means "commissioner, agent," coming from Old Norse *umbodh*, "charge, commission, administration by a delegacy," *umbodh* being made up of *um*, "regarding," and *bodh*, "command." In Old Norse an *umbodhsmadr* was a "trustworthy manager, missionary." In Sweden, an *ombudsman* was a deputy who looked after the interests and legal affairs of a group such as a trade union or business. In 1809 the office of *riksdagens justitie ombudsman* was created to act as an agent of justice, that is, to see after the interests of justice in affairs between the government and its citizens. Recently, however, an effort has been made to standardize the meaning of the term Ombudsman.

4. Origin of Ombudsman

The institution of Ombudsman owes its origin from Sweden, however, its traces may be found in ancient history. In this regard, Dr. Pickle, Director General of the Austrian Ombudsman's Office has made the following observation in his renowned paper "The Ombudsman and Administrative Reforms."^[2]

"Institution to investigate complaints can only be seen in the context of public administration; hence the history of ombudsman is also the history of public administration as a whole. It can be traced from the verses of the Koran; where the term 'administration' is not used, but in many of its verses the principles of political and administrative system are expounded. Justice was considered as one of the basic tenet of Islamic Ideology."

As Sweden has constitutional monarchy form of government where the king exercises almost all important governmental decisions with the approval of his cabinet but no longer exercises political power over its people. Article 96 of the Swedish Constitution lays down that ombudsman acts as a representative of the Parliament and should supervise the observance of the laws and status as they may be applied by the court and by public officials and employees. The justitie ombudsman is in reality entirely not only independent of the government but also of the Parliament itself; but made dependent only on law.

Ombudsman in comparative and International perspective in different countries are given below:

4.1 The Swedish Ombudsman

Ombudsman is a household word in Sweden. A Swedish word-Ombud means "Commissioner or Agent". It is derivate from the Old Norse Umbodh means to charge a Commission. In Old Norse, Umbodhsmadr was a deputy who looked after the interests and legal affairs of a group of such a trade union or business.^[3] Swedish Ombudsman is a world classic

establishment, which is independent, impartial and economically viable in terms of seeking help on corrupt practices. Hence, it has inspired confidence in public. After Sweden, many Scandinavian countries followed by the European, African, Australian countries adopted the concept. It is observed that the countries those are implementing Ombudsman properly are less corrupt and most peaceful, whereas, the countries those are not having it or not implementing it properly are most corrupt and very un-peaceful.

4.2 The Ombudsman in the United Kingdom

Public Accounts Committee and the Comptroller and Auditor-General and their relationship with each other are even greater than this unique contribution to the checking of maladministration. For it has been substantially on this model that, when it was finally decided in Britain that an experiment should be made with some further machinery for the redress of grievances, the office of Parliamentary Commissioner for Administration was established in 1967. From the outset of the campaign to improve remedies for maladministration, the analogy of the Comptroller and Auditor-General was used. Professor F. H. Lawson, in a short memorandum published in Public Law in 1957, a memorandum which was to prove most influential in initiating action as it turned out proposed that an Inspector-General of Administration should be appointed to investigate complaints of maladministration, that he should have the same status and tenure as the Comptroller and Auditor-General, and that like him he should report to a select committee of the House of Commons similar to the Public Accounts Committee. He contemplated that the person appointed would, "like the Comptroller and Auditor General, almost inevitably be a higher civil servant nearing the end of his career," and as such, "he would, while preserving impartiality and independence, not only have experience of administration, but be able to speak to officials and departments as one of themselves."

4.3 The Danish Ombudsman

The Danish Parliamentary Ombudsman is a law graduate and is elected by the Danish Parliament, the Folketing, to investigate complaints about the public administration.

Unlike the Swedish Ombudsman, the Danish office of Parliamentary Commissioner is of very recent origin. In 1953, as a part of a general constitutional revision, the Danish Constitution was amended to include a section reading: "Legal provision shall be made for the appointment by Parliament of one or two persons who shall not be members of Parliament to supervise the civil and military administration of the State."

On June 11, 1954, the King gave his assent to the Parliamentary Ombudsman Act,^[4] and on March 29, 1955, Parliament appointed Stephan Hurwitz, an eminent professor of criminal law, as its first Ombudsman. Professor Hurwitz has continued in the position since its creation.

While the Danish institution lacks the antiquity of its Swedish or even its Finnish counterpart, it has received much more attention in the English-speaking world than did its predecessors.^[5] One writer has suggested that since Denmark, like the common-law democracies, but unlike Sweden, had no tradition of free inspection of the public records, the Danish experience might be more instructive to persons concerned

with the development of legal institutions in England and America.

The debates preceding the creation of the office of Ombudsman in Denmark show that the new office was designed to pursue two objectives in particular.

First, the Ombudsman was to act on behalf of Parliament in relation to the administrative agencies, strengthening the control traditionally exercised by the supreme elective body and its individual members over the ministers and their officials. Such strengthening was considered necessary because of the growing power and increasing complexity of the administrative process. Apparently the Ombudsman was expected to perform this function through two kinds of activity: he was to oversee the exercise of the wide quasi-legislative powers which had been delegated to the Danish government services during the preceding generation and to propose amendments to existing legislation in order to promote law and order and to improve the civil service.

Second, the Ombudsman was to be a safeguard of law and order for the individual, a sort of appellate institution for citizens who come into conflict with the administrative agencies. In the words of the parliamentary spokesman of the Labor Party, the Ombudsman was meant to be "the protector of the man in the street against injustices, against arbitrariness, and against the abuse of power" ' on the part of the executive.

4.3.1 Administrative Appeal

It is a general principle of Danish law, which applies in the absence of any express provisions that an appeal may be taken to a higher authority from any administrative decision. The ultimate level of appeal is, as a rule, the competent minister. In the last few decades, however, special agencies of appeal have been set up within several branches of the administration; these agencies, which are much like the administrative tribunals of British law in organization and legal status, are more or less independent of the minister. This general opportunity for administrative appeal is cheap (more often than not it is entirely free of charge, legal assistance being rarely required) and normally speedy; it has the additional advantage that, in principle, the responsibility for providing the evidence necessary to decide the appeal rests on the public authority.

4.3.2 Judicial Review

The ordinary courts of law also exercise judicial review of administrative action under Danish, as under Anglo-American law. Any citizen having standing to sue may bring an action against the government, asking that an administrative decision be annulled or modified and, alternatively or in addition, that damages be awarded. Moreover, by declining to follow the demand of a public agency, the citizen may compel the agency to institute enforcement proceedings. However, the power of Danish courts to review administrative decisions is not unlimited. Judicial review is qualified not only by a number of statutes providing that particular administrative decisions shall be unreviewable but also by limitations similar to those imposed on the administrative courts of other continental countries.

4.3.3 The ombudsman and his work

The Ombudsman is elected by Parliament after every general election and may be re-elected indefinitely. If he no longer

commands the confidence of Parliament, he may be dismissed at any time and another elected to his position.^[6]

4.3.4 Relation to the Parliament

The Ombudsman is by law the mandatory of Parliament and exercises his control over the government services on behalf of that body. Parliament may not order the Ombudsman to consider a case or to drop a case under consideration, nor can it dictate the outcome of any investigation by him. Parliament's sole influence, beyond the power of appointment and dismissal, is its ability to set general regulations concerning the Ombudsman's functions.'

4.3.5 Qualifications

The Ombudsman may not be a member of Parliament and must be a graduate in law.^[7] He is paid according to the salary scale for judges of the Supreme Court and may be granted an additional allowance. "

4.3.6 Staff

The Ombudsman engages his own staff. During the past six years, he has been able to manage with a very small group of assistants; currently his staff is comprised of one deputy chief, one senior staff officer, three junior staff officers—all members of the legal profession—and the necessary clerical employees.

4.3.7 Comparison to Sweden

The scope of authority of the Danish Ombudsman differs substantially from that of the Swedish archetype. As a result of a theory of the independence of the courts, court personnel have been entirely excluded from the concern of the Danish Ombudsman,^[8] while in Sweden, control over certain court functions plays quite an important part in the office. On the other hand, the authority of the Danish Ombudsman does extend to the ministers, whose activities are beyond the competence of his Swedish counterpart.^[9] This difference is due to the fact that the Danish government, like most systems of central administration on the European continent, but unlike the Swedish one, has developed in as many hierarchical pyramids as there are ministers.

4.4 The Ombudsman of Norway

Norway is the tiniest Scandinavian nation that has effectively implemented the ombudsman institute. After the Second World War, Norway wanted machinery for administrative growth. By the Storting's (Parliament in Norway) resolution the ombudsman was shaped for objectors on November 23, in the year 1956.^[10] Ombudsman in Norway was shaped to safeguard the interests of the peoples from the administration. The Norwegian ombudsman makes the public administration to follow up its laws and regulations.

Norway's parliamentary ombudsman for civil administration—its Storting's Ombudsmann—came into being at the beginning of 1963. The accomplishments of so youthful an institution— as yet neither fully tested nor, indeed finally shaped—cannot be appraised confidently. The Norwegian method of handling citizens' disagreements with public administrators may nevertheless be described, and an attempt at preliminary evaluation may be useful while the pre-ombudsman past is still fresh.

5. Conclusion

In this work we conclude that the work of the ombudsman, is to ensure that public administration in state or country follows laws and regulations and to advise companies and the general public regarding the rules and norms of our democratic society must be considered as an extension of the judicial system itself.

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