

# Evolution and Global Expansion of the Ombudsman Institution: Enhancing Administrative Accountability and Human Rights Protection

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## ABSTRACT

This research paper explores the historical development and global dissemination of the ombudsman institution, focusing on its role in improving administrative accountability and protecting human rights. Originating in Sweden in 1809, the concept gained international traction post-1960s, with various nations adopting either classical or hybrid models to address administrative grievances, corruption, and human rights issues. The study examines key reasons for the worldwide adoption of the ombudsman institution, including changes in socio-political environments, increased awareness of citizens' rights, and the influential efforts of advocates and international bodies. Furthermore, it discusses the effectiveness, challenges, and future directions of the ombudsman in contemporary governance. Keywords: Ombudsman, administrative accountability, human rights, governance, Sweden, global dissemination, socio-political change, citizens' rights, welfare state.

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## I. INTRODUCTION

The ombudsman institution, conceived in Sweden in 1809, has evolved into a pivotal mechanism for ensuring administrative accountability and protecting human rights worldwide. Over the past century, as government administration has expanded and complaints about administrative behavior have surged, the need for a dedicated body to address these issues has become increasingly apparent. The ombudsman serves as an independent overseer, addressing grievances related to administrative misconduct, enhancing government transparency, and bolstering democratic accountability. The modern version of the ombudsman began to proliferate outside Scandinavia during the 1960s, with countries across various continents adopting the model to suit their specific needs. This institution's hybrid forms—ranging from human rights protection to anti-corruption measures—highlight its adaptability and relevance in contemporary governance. By investigating the historical trajectory, global spread, and multifaceted roles of the ombudsman, this paper aims to provide a comprehensive understanding of its significance in the modern administrative landscape.

## II. History of the Ombudsman

Government administration has taken a long time and complaints about administrative behaviour have increased in the last hundred years. As a result, several nations' governments have established the ombudsman institution to

address various types of administrative misconduct. There has been an ombudsman in some form or another since 1809 in Sweden, but the modern version of the position didn't start to expand outside of Scandinavia until the 1960s. It is preferred for the government to create the public sector institution known as the ombudsman in order to oversee the executive branch's administrative acts. One tool that helps promote good governance is the ombudsman, which increases government openness and democratic accountability. Some ombudsman organisations also function as hybrids. The first is the human rights ombudsman, whose duties include both administrative and protection of human rights; the second is the ombudsman who may be directed to enforce leadership codes, prevent corruption, or safeguard the environment. Furthermore, there are certain complaints that may and can be resolved with human rights considerations by the traditional ombudsman. Therefore, domestic human rights protection and promotion are responsibilities of both traditional and human rights ombudsman agencies. Because the country in question may have international human rights commitments that inform the applicable human rights standards, the ombudsman may be seen of as a domestic non-judicial agency that helps bring international human rights law into play. Improving administrative performance and increasing government accountability to the public are the goals of the ombudsman.

According to the Canadian Supreme Court's ruling in *B.C. Development Corp vs. Friedmnn*<sup>65</sup>, the Ombudsman is authorised to handle administrative matters that neither the courts nor the legislature nor the executive branch are able to handle adequately. In nations outside of India, the Lokpal is known as an ombudsman. From his exile in Turkey after a military defeat at the hands of Russia in 1709, King Charles XII of Sweden created the first institution of ombudsman in 1809, known as the justitie ombudsman (ombudsman for justice). When the monarch was not in Sweden, the government crumbled. To put an end to the civil unrest in Sweden, the Ombudsmen were responsible for policing the enforcement of laws and preventing public officials from abusing their positions of authority. Since the Swedish government needed someone to keep an eye on things, the monarch appointed a Justitiekanslern (Chancellor of Justice) in 1711. The state office that violates the law or engages in misconduct might be subject to judicial actions initiated by the Justitiekanslern. The Chancellor of Justice's position as "the government's ombudsman" ensures that this post was and is an executive appointment. After the monarch regained the right to pick the Chancellor of Justice in 1773, the responsibility for this task was taken over by the Estates (Riksdag or parliament). Following the overthrow of the monarch in 1809, a new constitution was ratified, dividing authority between the monarch and parliament. This gave parliament the authority to limit the king's administrative power. In addition, the Constitution established a new position known as the justice ombudsman, who is selected by parliament and has the authority to oversee the public administration and punish officials who do not carry out their responsibilities as required. From its original purpose as a watchdog over legislation, the organisation shifted its focus to responding to public concerns as it developed. In his statement, Wieslander explains why the legislature established the position of parliamentary ombudsman. According to the Constitutional Committee's letter, the legislature's appointment of an ombudsman would foster "genuine civic feeling" and fulfil the ombudsman's primary purpose of creating an impartial system of overseeing public offices. Because the Chancellor was only answerable to the executive branch, the Estates' discussions over the Committee's constitutional recommendations reveal that lawmakers felt the Chancellor's oversight of administration was insufficient to safeguard public rights<sup>1</sup>. There are now four ombudsmen (Riksdagens ombudsman) in Sweden's parliament, with one holding the title of chief ombudsman.

<sup>1</sup> Eklund, supra note 17 at 424.

- Parliamentary Ombudsmen are responsible for two things: making sure that the government doesn't infringe on people's basic rights and freedoms,
- and making sure that the government and courts follow the rule of law.

The Swedish ombudsman institution is similar to a human rights ombudsman in that it is mandated to ensure compliance with the human rights obligations outlined in the Swedish Constitution. The position of ombudsman was established in the 1919 Constitution of independent Finland, however the notion did not expand beyond Sweden. Two further Scandinavian nations, Denmark (in its Constitution of 1953) and Norway (in 1963), created the position much later. After gaining traction in Denmark and Norway, the concept of a public sector ombudsman quickly spread to other countries. The lack of prosecutorial powers in the Danish model is a significant distinction between it with the models used in Norway and Sweden. The primary objective is to provide a way for individuals to resolve concerns about government management in a relatively timely and free manner. While working towards this objective, a competent ombudsman agency does much more. Hill defined the ombudsman's role and its seven objectives in 1976. These have been widely acknowledged and even used as criteria to assess the effectiveness of ombudsmen, according to Danet's writing.

The ombudsman, in Hill's view, is <sup>2</sup>:

- a methodical approach to improving relations between citizens and government agencies,
- resolving specific administrative wrongs, humanising government employees,
- reducing public disillusionment with government,
- reforming government operations, overseeing government agencies,
- and defending public servants from unjust accusations of maladministration.

In the forty years after New Zealand became the first Commonwealth nation to establish an ombudsman, the majority of Commonwealth nations have followed suit. Classical or hybrid ombudsmen were established by a number of additional Commonwealth states in the Americas, Africa, Asia, and the Pacific area beginning in the mid-1960s. The primary duties of the Parliamentary Ombudsman, as outlined in the constitution, are safeguarding people's rights, ensuring that judges, administrative officials, and public workers adhere to the law, conducting legal analyses, and drawing attention to unclear parts of legislation. The role of the Parliamentary Ombudsman included investigating public complaints and taking supervisory action if needed. At first, the Parliamentary Ombudsman's function was more like that of a prosecutor, and complaints had a little impact. The Ombudsman's cases were either not prosecuted or were withdrawn. Approximately 8,000 complaints were received during the first hundred years that the Office of the Ombudsman was in operation. Foreign governments also paid little attention to the Ombudsman system during this period.

### 2.1 Spread of the Concept throughout the World

Following WWII, many non-Scandinavian nations began debating how to investigate government actions, in addition to the more traditional channels of judicial review, legislative oversight, and the press. A great deal of government red tape has grown out of the welfare state models implemented in several nations since the 1930s. Many people were worried that the average person should have access to an easy, independent way to have their grievances addressed. In his paper proposing an Ombudsman Institution in Canada in 28 Can J Econ & PoliSc at p. 543, Professor D C Rowatt elegantly expressed the situation thus way:

<sup>2</sup> The Ombudsman office, S.E. Aufrecht AK USA.

"It is quite possible nowadays for a citizen 1 right to be accidentally crushed by the vast juggernaut of the government's administrative machine. In this age of the welfare state, thousands of administrative decisions are made each year by governments or their agencies, many of them by lowly officials; and if some of these decisions are arbitrary or unjustified, there is no easy way for the ordinary citizen to gain redress<sup>3</sup>.

However, until Finland and Norway adopted the idea in 1919 and 1953, respectively, it remained a distinct Swedish institution. Denmark became the third and most consequential country to establish the institution in 1955. In 1962, Norway was the first Commonwealth nation to establish an Ombudsman for civil issues, and New Zealand followed suit the same year<sup>4</sup>. In England, a group of ICJ jurists, headed by Lord Whyatt, a former Chief Justice of Hong Kong, had proposed, in the late 1950s, that the UK appoint a parliamentary commissioner or similar official. Not only that, but many more nations are now considering or have already established organisations along these lines. Following that, a number of nations adopted the Ombudsman system: the United Kingdom in 1967, the majority of Canadian provinces in 1968, Tanzania in 1968, Israel in 1971, France in 1973, Portugal in 1975, Austria in 1977, Puerto Rico in 1977, Spain in 1978, and Australia at both the state and federal levels from 1972 to 1979 and 1977, respectively (1978). There was robust growth of the Ombudsman system globally.

More than 121 nations have implemented some kind of national or regional ombudsman since 1983, with that number rising to 27 by the end of 2004 (based on data collected by the International Ombudsman institute).<sup>5</sup>. The accompanying chart <sup>71</sup> will provide a rough estimate of the level of acceptance of the proposition in different constitutional contexts.

### III. Reasons for its world-wide spread<sup>6</sup>

The following are a few of the main reasons why the concept of an Ombudsman has recently gained popularity throughout the globe:

#### 3.1 **Changed Socio Political Environment:**

The notion of an Ombudsman was popularised in the post-WWII era due in large part to the altered sociopolitical climate of the globe, which saw the 'Welfare State' model adopted by many nations and the independence of many more from colonial authority. It became an urgent need to find effective ways of regulating the enormous discretion and powers appreciated by state officials as a result of the welfare state model's expansion of state staff responsibilities and authority. After all, "absolute power impairs absolutely" and "power corrupts all," and wherever there is freedom of choice, there is room for arbitrary behaviour.

#### 3.2 **Greater Awareness about Protection of Citizen's Rights**

Both long-standing democracies and more recent examples of representative government have shown a growing interest in protecting their people's constitutionally guaranteed rights and freedoms. The ombudsman position was not seen as a viable means of safeguarding individual rights against the ever-expanding reach of the state until the decades after WWII.

#### 3.3 **The efforts of Professor Hurwitz**

Professor Hurwitz, the first Danish Ombudsman, invested a great deal of time and effort into advocating for the proposal, and his efforts helped propel the Ombudsman concept to widespread adoption. He even went to Vienna to

<sup>3</sup> Supra, foot note no 14.

<sup>4</sup> Supra, foot note no 69.

<sup>5</sup> Supra, foot note no 68

<sup>6</sup> Supra, foot note no 69 at ps 9-12.

deliver presentations on the subject and published essays in publications throughout Europe, the United States, and the rest of the world. He made televised appearances in Britain and addressed scholarly audiences. Because of the profound effect this had, upon his return he began to receive grievances about the British government. His fluency in English was a major factor in the plan's acceptance by New Zealand. New Zealand's Ombudsman Guy Powels and Sweden's Judge Baxelius have both recently made an effort to spread the word.

### **3.4 The Role of UN Conferences and International Commission of Jurists**

The Ombudsman institution has garnered attention from the United Nations and the International Commission of Jurists, who have held human rights conferences on a regular basis in different regions of the globe. The appointment of a Parliamentary Commissioner for England was a direct outcome of a report by the International Commission of Jurists. Its Bulletin also has regular pieces covering the same ground. Notable among UN endeavours is the 1967 UN Seminar for Central and South America in Jamaica, which included Swedish Ombudsman Baxelius as an invited expert.

### **3.5 The Ombudsman Committee of International Bar Association**

The International Bar Association's Ombudsman Committee, which Bernard Frank heads, has made expanding the Ombudsman institution its primary mission. It updates the public on the most recent happenings with the institution all around the globe via publishing a newsletter every month and conducting surveys on Ombudsman on a frequent basis.

### **3.6 Role of Intellectuals**

Professors D.C. Rowat, Walter Gellhom, Anderson, Davis, Peel, Brian Chapman, W.A. Robson, Weeks, Gerald Caiden, Hill, etc., have all contributed significantly to the global dissemination of the concept of an Ombudsman through their research and writings.

## **IV. Why Ombudsman**

Nowadays, people have the right to speak up when they feel wronged by the government, have their voices heard, and seek redress if necessary. Machinery that is both effective and efficient in protecting and enforcing human rights is in place. A society governed by the rule of law, one in which basic human rights and dignity are upheld, requires certain institutions, one of which is the Ombudsman. The following are some of Bernard Frank's arguments why the Ombudsman institution is a good idea:<sup>7</sup>

The possibility of tension between government personnel and the general public has grown substantially with the establishment of welfare states. Therefore, safeguards against administrative and executive errors and abuse of authority have become essential.

- In today's culture, the long-standing emphasis on protecting people's legal rights has become even stronger.
- A great deal of authority has been transferred to the administrative branch from the legislative. Assisting lawmakers in their oversight of the executive and administrative branches is the role of the Ombudsman.
- The current systems for handling complaints are insufficient:

a. The legislator is unable to fully carry out their duties due to a lack of resources, personnel, and direct access to relevant documents and data. The agency he is looking into has to respond to him most of the time.

<sup>7</sup> Girdhar Sharma, op city at ps. 13-14.

- b. Administrative actions are subject to certain limits when reviewed by courts. The judicial forum has not yet addressed several aspects of administration.
- c. Many wronged people are scared off from seeking redress because of the lengthy, formal, and expensive nature of subsequent legal processes.
- d. Administrative courts often use an adversarial process similar to that of a regular court. They are sluggish, and the execution of the judgement is often delayed.
- e. Executives can also deal with grievances, but they don't have the necessary independence.
- f. While administrative systems often include avenues for complaints built into their framework, they aren't really unbiased. Regardless of its existence, the appeals process is lengthy and costly.
- Without the personal expenses to the complainant, without the time delay, without the strain of adversarial litigation, without the necessity of legal representation, and without interference from those in positions of power, the Ombudsman provides citizens with access to an unbiased and knowledgeable representative.
  - An ombudsman's presence might have a psychological impact. The public gains faith in the system because they know someone is looking out for their best interests and will call the government to account.
  - A country's political and judicial institutions may engraft him.
  - In cases where the administration is not compelled to do so by law or where the circumstances necessitate the application of principles of natural justice, the explanations for the judgements it makes will not be provided.<sup>8</sup>
  - However he failed to identify following elements of desirability of Ombudsman:
  - The public's perception of government cannot be adequately safeguarded without such an organisation. So, rather than being an adversary, it serves as a "safety valve" for the government. Having him around helps the administration be more open to new ideas, efficient, and responsive.
  - Neither does he overturn official judgements nor does he substitute his own judgement for it. Even in cases when he has the authority to bring charges, he seldom does so. He refrains from meddling in the day-to-day administration and instead uses criticism as his weapon of choice.
  - In his line of work, he handles many cases of maladministration that either do not qualify for or do not deserve the high expense of judicial scrutiny. Such is when an application is unanswered, etc.
  - According to Professor Hurwitz, "administration often does not provide reasons for its decisions, and the complainant often does not understand them" since he is unaware of the reasoning behind the decision. The Parliamentary Commissioner was able to persuade the complainant that there is no basis for a complaint by providing a thorough account of the whole incident.

### **Dysfunctional Aspects**

Ombudsman, like other beneficial phenomena, has both useful and dysfunctional aspects. Among the academics who have attempted to objectively explore the undesirable element of Ombudsman, Professor Gelhom stands out. Most of his colleagues have been romanticising the institution<sup>9</sup>. Here is a summary of the points he made: <sup>10</sup>:

<sup>8</sup> U.P.D. Kesari, Administrative Law, Central Law Publications, 17 Edi. 2008, at p. 275

<sup>9</sup> Girdhar B. Sharma op cit, at p. 18-19

<sup>10</sup> Ibid at p.19-21



- "Because they know someone is always watching, some public officials become too cowardly instead of too courageous." The Ombudsman often causes unanticipated expenses for the government by critiquing poor administrative performance and revealing wrongdoing.
- The work of the Ombudsman is known to often lead to a rise in needless bureaucracy. Because the Ombudsman's probe relies heavily on administrative files, authorities keep meticulous records to defend their activities in the event that an outside critic criticises them.
- Regrettably, the Ombudsman system may inherently have the tendency to overextend its authority. Everywhere you look, ombudsmen are prone to overextending themselves to meet the ill-informed public's expectations. Being hesitant to stretch in any way is terrible, but being overly eager to stretch may be dangerous as well.
- It is crucial for the Ombudsman's success, at least in the early years of his office's existence, that the administration support and appreciate his work. However, if the Ombudsman is always trying to find fault with administrators, this support and admiration might be withdrawn.
- Every year, in response to the complexities and specialisations in human affairs, government becomes more complicated and specialised. It is unrealistic to expect the Ombudsman, despite his or her intelligence and diligence, to understand the ramifications of every area of civil administration. On occasion, officials would express their disappointment that the Ombudsman failed to grasp the gravity of our issues.
- People may become too reliant on the Ombudsman and stop keeping an eye on how the government is doing things. "It appears that there are a lot of people who are ready to assume, without much proof, that everything is fine in the public administration world as long as an Ombudsman is overseeing operations."

## V. Development in Scandinavian Countries and others Sweden

Another option is the Swedish system of Ombudsman, which translates to "the grievance man" or an administrative commissioner. Instead of establishing an administrative tribunal with the authority to enforce decisions made by the French Conseil d'Etat, it establishes an independent advisory body that can investigate and propose punishment to Parliament for both public officials and ministers, against whom citizens can lodge complaints with the Ombudsman. This body cannot overturn administrative decisions or enforce its own decisions.

Established in Sweden more than 150 years ago (1809), the position of Ombudsman has subsequently been established by several nations, including the United Kingdom (1967), Mauritius (1966), Guyana (1966), Denmark (1954), Norway (1960), New Zealand (1962), and many more.

The position of Ombudsman was first established in Sweden in the Constitution of 1809 (Articles 96 et seq.), as mentioned before. This rank is held by one officer in the civilian government and another in the military. They have the status of parliamentary nominees, having been selected by their peers from among retired judges.

As a parliamentary representative, the Ombudsman is responsible for ensuring compliance with the law and reporting back to lawmakers. He or she can also take legal action, similar to a public prosecutor, against government officials who have shown bias, negligence, or broken the law. Similarly situated instances allow him to remove any judge from office<sup>11</sup> all the way down to the highest court in the land, standing trial before the impeachment court. Curiously, however, the Ombudsman can even deal with ministers, who can only be removed from office by a vote

<sup>11</sup> Actions of Judges are outside the jurisdiction of the Ombudsman except in Sweden and Finland.

in Parliament. A private individual, public servant, or judge may all lodge a complaint with the Ombudsman. Even though he lacks the authority to overturn or review administrative decisions, the Ombudsman may conduct investigations on his own initiative. More recently, he has been given authority over municipal affairs as well.

### **Denmark**

In a 1953 constitutional revision, Denmark created the post of Ombudsman and established a framework to resolve citizen complaints. To better reflect parliament in its administrative supervision of government officials and public workers, the Danish Parliament (Folketing) established the position of Parliamentary Ombudsman (Folketingets Ombudsmænd) in 1954 and formally renamed it the Ombudsman Act.<sup>12</sup> In accordance with a statute passed in 1954, the Danish Ombudsman possesses extensive powers to oversee all aspects of state administration, including the military and civilian sectors. He is also obligated to remain informed regarding any instances where individuals, including ministers, engage in unlawful behaviour, make arbitrary or unreasonable decisions, or exhibit mistakes or negligence while carrying out their duties. When the Ombudsman determines that a citizen has a reasonable basis to file a complaint, he or she may request any document from the relevant government agencies, even sensitive ones, so long as the complainant is not informed of the nature of the requested information. However, the Ombudsman cannot reverse a judgement or provide the complaint with any other kind of relief. His main responsibility is to provide a report that highlights the necessity for the government and the public to fix the mistake it identified.<sup>13</sup>, with the purpose of initiating disciplinary or judicial actions.

### **Norway**

In 1960, Norway's legislature established the position of Commissioner for the Civil Administration<sup>14</sup>. The position of Military Commissioner was established in 195 To "make sure that the individual citizen suffers no wrong through decisions made by administrative authorities, and that they, and all persons, exercising power in the service of the State do not make mistakes or neglect of their duties," is the stated mission of the Norwegian Ombudsman. The Ombudsman in Norway does not have broad authority to oversee government operations, in contrast to his Swedish counterpart. After the administrative authorities have made their judgements, he can only look into specific situations, either in response to a citizen's complaint or on his own initiative. Neither the institution nor the demand of any disciplinary or criminal actions is within his purview. He is solely responsible for gathering information, conducting independent investigations, and reporting his findings to the public and the government. Separate ombudsmen for equality and anti-discrimination, children, and consumers are in place in Norway.

### **New Zealand**

The Parliamentary Commissioner (Ombudsman) Act, 1963 created the Ombudsman System in New Zealand. The Act of 1975 succeeded this one. Here are a few characteristics of this law:

### **Composition**

To handle the volume of work, the Act allows for the appointment of an Ombudsman or Ombudsmen. In order to oversee the other ombudsmen's work and ensure coordination, one of them will be named chief ombudsman. The Human Rights Commission includes the Ombudsman among its members.

<sup>12</sup> Supra Foot note no. 68

<sup>13</sup> See Articles on 'the Danish Parliamentary Commissioner' in Public Law, (1958), p. 236: (1959), p. 115.

<sup>14</sup> First appointment in 1963.



### Appointment, Tenure & Removal

The Governor-General appoints each Ombudsman after receiving praise from the House of Representatives. With that in mind, he is a candidate for <sup>15</sup> of the House and receives backing from every chamber. Nevertheless, there are endeavours to enable him to carry out his day-to-day duties independently of the Parliament. He serves for a term of 5 years and is eligible for reappointment. The House of Representatives may petition the Governor-General to remove him from office on the grounds of incompetence, insolvency, neglect of duty, or misbehaviour.

### Scope of Jurisdiction

Section 13 (1) describes the jurisdiction of the Ombudsman as

"to investigate any decision or recommendation made, or any act done or omitted... relating to a matter of administration and affecting any person or body of persons in his or its personal capacity."

"Matters of administration" only refer to operational concerns and does not include policy considerations. However, the Ombudsman has ultimate discretion over whether a given government action constitutes a "policy" or "act of administration," and the absence of a formal standard for this matter means that he must exercise prudence lest he get involved in matters of policy.

His newfound abilities will have far-reaching consequences. He is able to provide help in the following cases:

- In cases where the administrative action in question violates the law.
- In cases where the action in question is unfair, discriminatory, oppressive, unreasonable, or based on an error in law or fact.
- In cases where the action is incorrect.
- When the discretionary power is used for inappropriate purposes or for irrelevant reasons.
- In cases where justification is required, but is lacking.
- In cases where the law or practice that underlies the action is unfair, discriminatory, or unreasonable<sup>16</sup>.

Assuming the police initiate the investigation, he may also look into their activities. The complainant may take their case to a higher-ranking police officer and ultimately the Ombudsman if they are unhappy with the outcome of the police investigation or if the complaint goes unanswered.

Also, according to the Official Information Act of 1983, he is supposed to look into government choices that make it hard to get official documents.

However, he does not have authority over the following matters:

- Policy decisions made by ministers in a way that does not compromise the idea of a parliamentary system of government. But he may show his opinions on the Minister's decision's legitimacy and practicality indirectly by looking at the department's suggestion.
- Complaints that are unfounded, malicious, or otherwise unimportant, or in which the complainant lacks a substantial personal stake, may be rejected without further investigation.
- The availability of a merits-based appeal to a court or tribunal precludes his evaluation of an administrative act. However, if there are exceptional circumstances that make it unrealistic to expect him to appeal, he may investigate such concerns.

<sup>15</sup> MP Jain & S.N. Jain, Principles of Administrative Law, LexisNexis Butterworths Wadhwa Nagpur, H/B Enlarged Edi. 2011, Vol.2, p.2659

<sup>16</sup> Dr. U.P.D. Kesari, Administrative Law, Central Law Publication, 17<sup>th</sup> Edi., 2008, p.278.

- If he thinks it's not essential to look into a complaint any further, he may choose not to.

### **Remedies that can be Awarded by Ombudsman**

Any of the following programmes may be suggested by the Ombudsman:

- Please bring this concern to the attention of the relevant authorities so that it may be further investigated.
- The missing item will be added.
- The decision should be reversed or changed.
- Changes should be made to any procedure that formed the basis of the decision.
- It is necessary to reevaluate the laws that provided the basis for the judgement.
- The choice ought to have been accompanied with justifications.
- Everything else has to be done.

### **Procedure**

Notify the relevant department and official that the Ombudsman has initiated an inquiry into. The inquiry is conducted in secrecy. Subjects that the Ombudsman may investigate include:

- Either suo moto or the aggrieved party's complaint.
- Referred to by a House committee.
- After the Prime Minister, with the approval of the Chief Ombudsman, made the referral.
- Everyone who stands to lose out because of the Ombudsman's findings deserves a chance to have their say. In addition, he must inform the complaint of the investigation's outcome.

### **Powers**

He is free to consult with anybody he considers appropriate, ask them questions, and get information from them. Those that he summons may be examined under oath by him. Unless the Attorney General certifies that the evidence might compromise New Zealand's security, defence, or international relations, impact criminal investigations, or disclose confidential cabinet or committee proceedings, he has access to departmental records and premises.

### **Report**

No executive order or decision is ever made by the Ombudsman himself. All he does is provide suggestions, and it's up to the agency to implement those suggestions. First, the Ombudsman will inform the relevant department of his suggestions on how to proceed with the case. If that department doesn't do anything, the real Ombudsman may take matters into his own hands and report to the Prime Minister or the House of Representatives, depending on his judgement. For the most part, departments follow the Ombudsman's recommendations because they are afraid of negative press. The House of Representatives receives the Ombudsman's yearly report detailing their work. These clauses make it clear that Parliament is the last resort in the event of a dispute between the Ombudsman and the Administration. It follows the tenets of the responsible ministerial system and the parliamentary form of government. Several intriguing facets of the administration's operation are illuminated by the Ombudsman's reports. Here are a few of his suggestions:

- He has advocated for the need of making administrative processes transparent.
- He discovered that the government often makes judgements without knowing all the information.
- The way the administration uses discretion is something he has questioned.

- His suggestion that the theory of Promissory Estoppel be given full force has been approved by the administration.
- Additionally, he has proposed changes to rules and laws in certain instances.

### Britain

Although the Parliamentary Commissioner Act, 1967 was responsible for actually putting the idea into action, the British Ombudsman may be traced back to the Whyatt Report (1961), which is also called the Justice Committee Report. A central tenet of the movement against a British Ombudsman was the revered idea of ministerial accountability. There was a strong constitutional argument that an Ombudsman should not sneak up on a minister and investigate his department's inner workings since the minister was answerable to Parliament for everything that happened in his department and officials did not have public responsibility<sup>17</sup>. The fact, however, was that many departments' murkiness, jumble, and slipshoddery were concealed by ministerial responsibilities. It is now clear from experience that the minister and the Ombudsman function, constitutionally speaking, on separate but complementary levels. According to one minister, the Parliamentary Commissioner does a fantastic job, but the government isn't always happy with him<sup>18</sup>. Drewry and Harlow came up with the idea of the Parliamentary Ombudsman as "a supplement to the long-standing and esteemed function of the member of parliament as a champion for constituent complaints"<sup>19</sup>. Richard Crossman<sup>20</sup> the Ombudsman would be a "servant of the House," implying that they shared this sentiment. However, he did say that the Ombudsman's probes will uncover "a cutting edge of a really impartial and really searching investigation into the workings of Whitehall"<sup>21</sup>. It's critical to understand the political and legal setting behind the introduction of the parliamentary commissioner. It is important to note Bradley's comment about this matter<sup>22</sup>. Sir Cecil Clothier<sup>23</sup> remembers that the problems with Parliament were a contributing factor in the decision to establish an Ombudsman. Justice Report

Despite the expansion of tribunals and investigations and the increasing authority of the Court in the United Kingdom, many administrative activities were still not subject to objective assessment. For instance, even if a ruling was very severe, it could not be appealed if it fell outside of the domain of tribunals or did not constitute a violation of law or natural justice. People used to go to their representative or councillor for help in these kinds of situations. In light of these limitations, the International Commission of Jurists (Justice) formed a committee to investigate potential substitute processes. According to the Justice Committee's report, while Parliament is and should continue to be the primary venue for complaints about executive maladministration, the current legislative process could be improved with the addition of machinery that would allow an impartial body to investigate these claims. Accordingly, the study recommended that the United Kingdom establish an Ombudsman system.

<sup>17</sup> For detailed discussion on misconceptions surrounding ministerial responsibility, refer Sir K. ^heare, *Maladministration and its Remedies*, ch. 3.

<sup>18</sup> H.W.R. Wade & C.F. Forsyth, *Administrative Law*, Oxford University Press, 10th Ed., p. 76.

<sup>19</sup> Mark Elliott (Consultant Editors: Jack Beatson and Martin Mathews), *Administrative Law Text and Materials*, Oxford University Press, 4th Ed., at p. 709

<sup>20</sup> He was the government Minister responsible for piloting the Parliamentary Commissioner Bill through the House of Commons.

<sup>21</sup> Mark Elliott, *op cit*, at p. 709.

<sup>22</sup> *Supra*, Chapter 1.

<sup>23</sup> Former Parliamentary and Health Services Ombudsman of United Kingdom. <sup>97</sup>Mark Elliott, *Loc cit*.

The conservative government of Harold Macmillan opposed the establishment of the Parliamentary Ombudsman for many reasons:

- There were already sufficient avenues for appeal via the citizens' right of the MPs,
- and his nomination would significantly impede the pace of public work.

A year later, in March 1967, the bill to create the Parliamentary Ombudsman was tabled by the newly-elected Labour administration. In the United Kingdom, five distinct kinds of Ombudsman machinery had been discovered by 1983:

- "Parliamentary Commissioner for Administration (PCA), 1967.
- Northern Ireland Parliamentary Commissioner, 1969.
- Commissioner for Complaints (Northern Ireland), 1969.
- Health Service Commissioners: England, Scotland and Wales, 197

### **Appointment, Tenure and Removal"**

The Crown appoints him after consulting with the prime minister. As long as he is in good standing, he will remain in office until he is 65 years old<sup>24</sup>. Only with an address from one of the Houses is he removable. He serves on the Council on Tribunals as an ex officio member<sup>25</sup>.

### **Scope of Jurisdiction**

Schedule II of the Act lists the departments that are now under his authority; however, this list may be changed by an Order in Council. The government's goal in compiling this list is to ensure that only organisations that rely on government policies for funding and long-term survival are included. An other noteworthy aspect is that, in contrast to the approach in New Zealand, the Parliamentary Commissioner has the authority to directly examine and critique ministerial actions<sup>26</sup>.

The primary responsibility of the British Ombudsman is to investigate claims made by individuals who believe they have been wronged as a result of incompetence or neglect in the performance of official duties by government agencies<sup>27</sup>. Since the sole need is that the complaint assert that maladministration has transpired, the absence of a definition or explanation of the word "mal-administration" in the Act is perhaps not surprising. One source informed Parliament that the term would include a wide range of issues, including "bias, neglect, inattention, delay, incompetence, ineptitude, arbitrariness and so on," predicting that the list would be lengthy and intriguing. In addition, the Act states that the Commissioner has no business casting doubt on the validity of a decision made by a government agency or other body exercising discretion without maladministration, Maladministration and unmeritorious judgements are so distinguished. Although the latter is within the scope of the ombudsman's authority, the former is false<sup>28</sup>. The commissioner may care about the process but not the outcome of the decision. At the recommendation of the Select Committee, however, the Ombudsman is now responsible for reviewing "bad in quality" or "clearly wrong" judgements. From the decision's quality, he may deduce that there was some

<sup>24</sup> This is contrary to other systems where generally Ombudsman is appointed for short terms, like for 5 years.

<sup>25</sup> Supra foot note no. 92 p.2669

<sup>26</sup> H.W.R. Wade & C.F. Forsyth, op cit at p.76.

<sup>27</sup> S. 5(1) of the Act, c.f.M.P.Jain & S.N.Jain, Principles of Administrative Law LexisNexis Butterworths Wadhwa Nagpur, 7th H/B Enlarged Edi. 2011, Vol.2, p.2672. <sup>102</sup>for detailed discussion on mal-administration refer supra, ch. 2 <sup>103</sup>H.W.R.Wade & C.F.Forsyth, op cit at p.79-80

<sup>28</sup> Supra foot note no. 92, p.2672

maladministration in making it, and he can request a review of the judgement if he thinks it's terrible. Maladministration is the result of poor decision-making, which is a direct statement from Wade<sup>29</sup>. The Commissioner also mentions the terrible rule when criticising faulty choices. At first, the Commissioner was hesitant to voice disapproval of departmental policies and procedures. However, it has now reconsidered after receiving advice from the Select Committee.

The Commissioner is not required to look into some problems since they are specifically omitted<sup>30</sup>:

- Motion impacting international relations.
- Anything done outside of the UK (apart from what consular officials do).
- Things to do about foreign territory. Extradition and fugitive criminals.
- Looking into criminal cases.
- State security (including concerns pertaining to passports) must be protected.

The military's disciplinary process, as well as any case brought before a court of law in the United Kingdom or elsewhere. However, he retains the authority to exercise his judgement in cases where he determines that the complaint would not reasonably be able to use the remedy that is available via the courts; this decision does not impact the right to access courts.

- Mercy's prerogative and the referral of matters to certain courts.
- Clinician-patient interaction.
- Aside from the sale of excess land so gained and the compulsory or voluntary purchase of land, all other economic and contractual activities are excluded.
- All concerns pertaining to personnel in the public and military sectors, including compensation, disciplinary actions, and dismissal, as well as any situation where the government has the authority to decide or authorise a course of action.
- The bestowal of titles, decorations, privileges, or charters by the British government.
- Any administrative action conducted by a court or tribunal employee in response to an explicit or inferred directive from a judge or panel member<sup>31</sup>.
- The Ombudsman has the discretion to dismiss a matter if he determines that the complaint lacks merit or does not fit within his purview. When using ReFletcher<sup>32</sup>, The decision of the Parliamentary Commissioner to conduct an inquiry was not challenged by the court.<sup>33</sup>.
- The decision of the Parliamentary Commissioner to conduct an inquiry was not challenged by the court.

### Procedure

Any member of the public has the right to lodge a complaint. Immigrants and incarcerated people are both included by the term. Any person or corporation may file a formal complaint so long as they are not a government agency, nationalised business, public service organisation, or nominated or funded agency. Either the complainant or an authorised agent after his death may file the complaint. No parliamentary elector or British subject status is necessary; nonetheless, he must have been a resident of the UK or be physically present there when the challenged

<sup>29</sup> H.W.R. Wade & C.F. Forsyth, op cit I at p.81.

<sup>30</sup> 5(3), Sch III and notes to Sch II makes various exclusions.

<sup>31</sup> H.W.R. Wade & C.F. Forsyth, op cit, at p. 78-79.

<sup>32</sup> (1970) 2 All ER 527.

<sup>33</sup> Supra, foot note no 92 at p.2670.

action was carried out<sup>34</sup>. Only via a member of the House of Commons may an injured party submit a formal complaint to the Ombudsman. The number of complaints sent to the Ombudsman has decreased due to the lack of a direct access mechanism to the Parliamentary Commissioner. Reasons provided for this include the fact that it will allow for a preliminary screening of complaints, which will prevent the Ombudsman from being overwhelmed, and the fact that this clause acknowledges the historic role of lawmakers in seeking justice for the people. Finally, unlike the Ombudsman in New Zealand, the Ombudsman in this country cannot take initiative. Any agency or individual implicated in the alleged wrongdoing must be given a chance to respond to the charges levelled against them by the Commissioner. As he conducts his private investigation, he is at liberty to follow any protocol he thinks is necessary.

### **Remedies**

In cases when the Commissioner determines that a department has committed maladministration, he has the authority to urge that the agency compensate the affected party. An apology, reversal of the contested judgement, or ex gratia payment are all examples of possible forms of redress. But the Ombudsman cannot change or reverse a ruling on his own.

### **Powers**

Anyone he thinks may be able to help his inquiry, including ministers, officers, and members of the appropriate departments or authorities, might be asked to provide information or records. His authority to summon witnesses and examine them is comparable to that of a judge. He typically reviews the department's records and meets with the officials one-on-one. In rare cases, he may even send an employee to the complainant's house to conduct an interview. Disclosure of evidence to the Ombudsman should not be hindered by any legislative provision requiring confidentiality from any person. Furthermore, the Crown has no right to claim privilege when it comes to providing evidence or producing documents. However, what happens at cabinet meetings cannot be revealed. Additionally, ministers have the authority to withhold information from the Ombudsman if they believe it is essential to protect the state or the public interest. Any document that a person is not required to provide or exhibit in court proceedings cannot be demanded of them before the Ombudsman either<sup>35</sup>.

Judicial review may also be used against the Commissioner, although courts are hesitant to step in since his decisions are based on subjective factors. With regard to the case of *Ex parte Dyer* <sup>36</sup> The following suggestions have been put out by the Court regarding the operation of the British Ombudsman:

- The Judge may examine his decisions, although they will not easily be convinced to interfere with his discretionary powers.
- He has the authority to select one or more complaints to investigate;
- He is not obligated to provide the complainant with a copy of the preliminary report for their feedback;
- Once he submits his report to the sponsoring lawmaker, he is no longer able to reopen the complaint; thus, he is *functus officio*.

### **Report**

The department or authority in question, as well as the MP who supported the complaint, get a report detailing the findings from the Ombudsman's inquiry. Whenever he feels the need, he may bring a special report before

<sup>34</sup> H.W.R. Wade 1 C.F.Forsyth., op cit at p.86-87. <sup>111</sup> Supra, foot note

<sup>112</sup> Ibid at p.2671.

<sup>35</sup> M.P. Jain & S. N. Jain, op cit at p. 2671.

<sup>36</sup> R v. Parliamentary Commissioner for Administration, ex parte Dyer, (1994) 1 WLR 621.



Parliament detailing each instance where he believes injustice has occurred and how he believes it will be addressed. Additionally, he is required to provide an annual report to each House outlining his overall effectiveness in his role. To advise the Ombudsman, review his reports, and report back to the House with its own findings, the House of Commons has established the Select Committee on the Parliamentary Commissioner for Administration.

### **Effectiveness**

Many instances of unfairness have been rectified by the Commissioner, as shown in his report, even though it is very unlikely that this would have happened in the absence of his intervention.

One positive finding from 1972 by the Select Committee was that "government departments are very ready to accept the views of the Commissioner and to afford a remedy for injustice." <sup>37</sup>. The first reason is the constant pressure from the Select Committee, and the second is that the departments are aware that any instance of maladministration would be reported to a member of parliament. The Ombudsman plays a crucial role in ensuring that individuals who have been deceived and harmed as a result of officials' incorrect information or advice get compensation. It is possible to bring up the Barlow Clowes Affair here<sup>38</sup>. Many people lost a lot of money when the Barlow Clowes investment firm that had a licence from the Department of Trade and Industry went bankrupt. According to the Ombudsman's inquiry, the DTI has been involved in maladministration. The government did not agree with the Ombudsman's conclusions, but nonetheless compensated the victim ex gratia up to 90% of their loss due to "exceptional circumstances of the case" and because it respected the Parliamentary Commissioner's positions. The Ombudsman principle's success is shown, among other things, by its ongoing expansion into other domains. Originally established for the federal government, it has since expanded to include state and regional health departments as well as local governments. Beyond the realm of government, it has spread to the business and financial sectors, creating ombudsman offices for things like insurance and banking, conveyancing, legal services, housing, and pensions<sup>39</sup> etc.

### **Criticism & Suggestions**

There are those who think there's room for improvement in Britain's present system of Parliamentary Commissioners. For instance:

- Some people thought that, as a lawmaker, Parliament, not only the prime minister, should have been involved in his nomination process. The prime minister now consults with the head of the relevant select committee before making appointments.
- • The commissioner is now required to have direct access to those who want to lodge complaints. Due to the current system's isolation from the public and relatively low complaint volume.
- It is suggested that the Commissioner be granted the power to suggest changes to administrative procedure and legislation. This would enable him to alert Parliament to any unforeseen injustices caused by laws.
- The ombudsman's current framework, which is "mal-administration causing injustice," is very limited and rigid. He has no right to challenge the decision's validity.
- More precise language defining the Ombudsman's authority to provide remedies in cases of unreasonable, unfair, or oppressive behaviour is proposed. Some argue that it doesn't cover maladministration in personnel concerns

<sup>37</sup> H.W.R. Wade & C.F. Forsyth, op cit p.88.

<sup>38</sup> For details refer to H.W.R. Wade & C.F. Forsyth, op cit at p.84.

<sup>39</sup> Pension Ombudsman has power to issue legally enforceable awards and are also subject to appeal to the High Court on the point of law.

like appointments, firing, or retirement, and that it doesn't address complaints against nationalised enterprises or government contracts.

- Others have argued that the actual issue with Britain's system is the absence of a thorough corpus of administrative law, and that the Ombudsman is just a stopgap measure until that is addressed.

## 5. Conclusion

The ombudsman institution has firmly established itself as a cornerstone of modern administrative governance, offering a robust framework for addressing grievances, ensuring transparency, and upholding human rights. From its inception in Sweden to its widespread adoption across the globe, the ombudsman has proven to be an effective tool in mitigating administrative misconduct and enhancing public trust in government institutions. The global spread of this concept, driven by changing socio-political climates, increased awareness of citizens' rights, and the concerted efforts of advocates and international organizations, underscores its universal applicability and necessity. Despite facing challenges such as bureaucratic resistance and the need for continuous adaptation to complex administrative environments, the ombudsman remains a vital institution in promoting accountability and justice. Future directions for the ombudsman institution include further integration into various levels of governance, enhanced collaboration with international human rights bodies, and ongoing reforms to address emerging administrative challenges. By maintaining its core principles of independence, impartiality, and accessibility, the ombudsman can continue to play a crucial role in safeguarding the rights and interests of citizens worldwide.

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