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Review Article

Assessing the Legal Authority of the Ombudsman over Serving Judicial Officers: A Jurisprudential Analysis

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Abstract: An important component of India's administrative structure, the Indian Ombudsman has been the focus of intense discussion and investigation. Jurisprudential traditions examine the legal scope and limitations of the ombudsman's authority to investigate and prosecute active judicial officers. The study investigates whether judges are immune from the Ombudsman's authority due to their judicial independence or whether accountability procedures can hold them to the same standards as other public servants. Since India's independence, the Lokpal and Lokayuktas have served as the ombudsman, addressing the need for strong accountability in the country's administrative structure. However, their successful implementation has been hampered by ongoing flaws in the administrative machinery. The study also compares the ombudsman model in other nations, looking at the institutional and legal subtleties that have influenced its development around the world. Finding shortcomings in India's current administrative structure with regard to the Ombudsman and suggesting ways to improve its institutional establishment are the main goals. The study also identifies structural distinctions between the administrative systems of the United States, the United Kingdom, and India.

Keywords: administrative law, separation of powers, public accountability, judicial independence, judicial accountability, ombudsman, judicial independence, Lokpal and Lokayuktas, and jurisprudential analysis

OVERVIEW

An officer or commissioner who looks into and documents citizen complaints against the government is known as an ombudsman in Scandinavia. Protecting citizens from abuse of the administration's authority is the Ombudsman institution's primary goal. In nations like India, which also struggles with effective governance, corruption has long been a problem. In order to handle public complaints against administrative errors, the Ombudsman was established in a number of democratic nations, including India. The Ombudsman Office was first established in Sweden in 1809. Numerous nations have since adopted similar policies, including Australia, India, Israel, the United States, the United Kingdom, and New Zealand. The ombudsman protects people's rights, encourages openness in government, and keeps an eye on the government. Legislation creating an ombudsman in the form of Lokpal and Lokayukta took effect in the second decade of the twenty-first century. This research paper examines the significance of the Ombudsman, its historical context, and its function in monitoring the authority and oversight of administrative entities to prevent their abuse. Ombudsman offices are a component of the administrative law system, examining the actions of the executive branch and protecting the interests of the public by identifying instances of maladministration. They serve as a watchdog to address complaints and stop executives from treating citizens unfairly, acting as a "representative" of the people. In a democracy, the people make the final decision about who will be given administrative responsibilities. By serving as a check and balance on executive authorities or governmental power, the ombudsman personifies democracy. Upholding the rule of law, protecting citizens' rights, and making governmental entities answerable for their actions toward the public are all made possible by their dedication to justice. Professor Larry B. Hill lists several qualities that make an ombudsman pure, including being legally established, operationally independent, functionally autonomous, monitoring specialists, having a large resource base, being normatively universalistic, and being widely accessible and visible. The ombudsman institution's goals are to prevent abuses by serving as a bureaucratic watchdog, reduce corruption, implement administrative reforms, and make bureaucracy more humane.

Development and History

In order to supervise public employees and safeguard the public interest while King Charles XII was away, the ombudsman position was first created in Sweden in 1809. The Consumer Ombudsman (1971), Swedish Children's Ombudsman, Equal Opportunities Ombudsman (1980),

Ombudsman against Ethnic Discrimination (1986), Office of Disability Ombudsman, and Press Ombudsman are just a few of the ombudsman organizations that have been established in Sweden over the years.

Although he cannot overrule decisions, Denmark's Ombudsman was created in 1954 to oversee state administration and handle complaints. In 1960, Norway did the same, guaranteeing that its citizens are shielded from administrative mistakes.

New Zealand (1962), England (1967), and Australia (1976) were the first common law nations to establish an ombudsman system. The Governor-General appoints New Zealand's Ombudsman, who looks into administrative actions. In England, complaints about poor administration must be sent to the Parliamentary Commissioner via a member of the House of Commons. Both state and federal ombudsman systems exist in Australia; the federal ombudsman is appointed for a seven-year term and has the authority to look into administrative issues. With Finland establishing its ombudsman in 1919, Denmark in 1955, and Norway in 1961, the ombudsman model has impacted numerous European nations. A parliamentary commissioner was appointed in 1966 after the British government gave the ombudsman system some thought in the 1960s.

Functions and Powers:

Because of the autocratic regimes and bureaucratic indifference that were common in many European countries during the nineteenth and twentieth centuries, the ombudsman's job is essentially cantered on protecting citizens' rights and freedoms. This historical background emphasizes the Ombudsman's creation as a civil liberties and accountability mechanism. The judiciary is an essential defender of the rule of law in a constitutional democracy, guaranteeing impartial decision-making and preserving democratic values. However, there are significant concerns regarding the distribution of authority and supervision within the legal system when judicial officers are held accountable to organizations like the Ombudsman, which look into cases of corruption and poor administration.

The Lokpal in India has considerable authority to fight official corruption. It can control investigations, stop the destruction of evidence during preliminary investigations, and seize assets obtained through corrupt means. The Lokpal also has the power to sanction the prosecution of public officials involved in corruption and to suggest their suspension or transfer. The objective of this framework is to improve accountability and transparency in government agencies.

In a similar vein, the Lokayukta functions at the state level and includes ministers and other higher-ranking public officials under its purview. It has the power to carry out raids, look into the activities of public servants, and suggest sanctions for those convicted of corruption. Like the Ombudsman, the Lokayukta serves as a watchdog over public servants and makes sure that the law is followed. To preserve integrity in public administration, the Ombudsman and Lokayukta are both essential. As appellate authorities for complaints originating from other laws, they can take action independently or in response to complaints. Crucially, these organizations also offer protection to those who reveal corruption and act as whistleblowers, creating a safe space for citizens to express their worries.

Despite Lokayukta's vital roles, its efficacy may be hampered by variations in its jurisdiction and organizational design among states. However, Lokayukta continues to play a crucial role in looking into claims of corruption and poor management, making sure that public servants are held responsible for their deeds. All things considered, the creation of these institutions shows a dedication to preserving democratic principles and shielding people from abuses of authority.

The Ombudsman's Function and Purpose

The ombudsman, or comparable anti-corruption agency, is required by law or the constitution to look into complaints made against public servants. The ombudsman has broad authority in many jurisdictions, including the ability to conduct fact-finding investigations, recommend prosecution, and start administrative procedures.

However, there is legal dispute over whether these powers apply to active judicial officers. The majority of constitutions treat judicial officers differently than they do executive and legislative actors, and they frequently call for special procedures like judicial councils or impeachment trials to discipline and remove them.

ENHANCED DEFENCE OF CIVIL RIGHTS

Growing modern bureaucratic state has become more involved in citizens' life and developed increasingly complex administrative systems they have to cope with. In this context, giving people the means to challenge arbitrary or unfair administrative action is absolutely vital. Through an ombudsman institution, one can file a complaint and pursue possible remedies for an inappropriate or unfair state action. When the government handles a matter poorly, acts unfairly, or denies citizens benefits or rights, the ombudsman provides a forum for people to express their grievances and maybe defend their rights.

More Competent Public Service Apart from enhancing the defense of individual rights, ombudsman offices help in efficient public administration. Among government agencies, the ombudsman is in a special role to identify and fix public administration's structural problems. By means of the office's technical expertise—obtained by means of the investigation and analysis of individual complaints—as well as its record tracking and classification capacities, the ombudsman is able to identify possible systemic causes of maladministration. Since a functioning ombudsman office promotes strong working relationships with other governmental institutions and should be known for its impartiality and neutrality, public officials are probably appreciative of the recommendations regarding administrative practices of the ombudsman office. Government agencies often aggressively seek the advice of

the ombudsman office to ensure fairness in the development and execution of administrative policies.

Less Cost Conflict Management The offices of ombudsmen represent wise public expenditure. Many offices do not charge for their services, thus the financial advantages to the citizen are rather great. Even more savings come from the quick and casual way that complaints are settled instead of costly and protracted litigation. The cost-benefit analysis is mostly due to the government's unusual structure and informal problem-solving strategies since they help to lower the demand for a sizable staff and, hence, overhead expenses.

Closes the distance separating the people from the government. The public's trust in government action and sense of security can be much raised by the presence of an objective, independent investigator. This is especially helpful in a transitional society that has lately moved from an authoritarian political system to one based more on democratic values. After investigating a complaint, the ombudsman office at least can let the public know about government activities. Depending on the findings of the office, it could also be in a position to propose changing or withdrawing a government action. At least the citizen will know that the government has to defend its actions to an unbiased arbiter even if they might not agree with the ombudsman office's conclusions. One. An ombudsman office helps to close the distance between the public and the government by pushing a more "people-sensitive" attitude to governance. As the ombudsman office uses its investigative authority, public employees are advised that decisions and actions affect individuals and may call for explanations or justifications from an outside reviewer with the authority to publish their recommendations.

Mutualism Rather of litigation, the ombudsman office uses investigation and mediation to settle an underlying problem that the government and its people find acceptable. Unlike a legal advocate, the ombudsman office acts in a neutral capacity. Ombudsman offices, for example, cannot legally enforce obligations unlike those of judges.

Enhanced Access to Conflict Management Finally, the ombudsman office provides a quick, reasonably priced extrajudicial dispute resolution system. The ombudsman office is a freely accessible protection against government power abuse that the general people can depend on. This is especially important since legal action against administrative mistreatment is usually practically non-existent due to the great expenses and drawn-out adjudication process or lack of a legal remedy.

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A TENSION IN JURISPRUDENCE BETWEEN JUDICIAL INDEPENDENCE AND ACCOUNTABILITY

Judiciary Independence

Judicial independence is guaranteed by both the institution and the individual. In terms of law, it is associated with contemporary democratic constitutionalism and the division of powers as outlined by philosophers such as Montesquieu. The judiciary must be immune to outside influence, particularly from executive branch entities. Courts can be intimidating and complicated. Significant rights and issues that are highly significant to individuals, communities, and society as a whole are typically the ones that bring the public into contact with the legal system. Court users want someone to help them identify the issue and get the case back on track when they encounter perceived or real problems for any reason, such as the novelty of their legal issues, perceived mistreatment, or other particular concerns. This is crucial because even small mistakes made by a court system can have a big impact on the people involved and the public's opinion of the legal system. National public opinion surveys about public trust and confidence in the courts provide us with this information. In New Jersey, we have discovered this information through our efforts to gather public input through citizen advisory boards, focus groups, and customer service surveys.

Responsibility in Judicial Behaviour

It is understandable that the public wants to hold the system responsible when its bureaucracy fails to protect their individual rights adequately. New Jersey, like all courts, has established procedures for formal complaints about judges and attorneys and for appeals of decisions. 24 The procedures for citizens to file complaints about court employees are less clear. Formal disciplinary procedures, however, frequently require written correspondence from the complainant. 2 5 In many cases, the public may not be aware of these procedures or, if they are, may wish to consult with someone before contacting these bodies. The effectiveness of established complaint procedures depends on their accessibility and public awareness. The public must not find them too difficult to use because of language or literacy barriers or because they are not familiar with such procedures for them to be effective and provide meaningful redress. In addition to handling complaints regarding court employees, the ombudsman disseminates information about these processes. More significantly, the ombudsman process gives the complainant the opportunity to voice their concerns, pose inquiries, and weigh their options and potential remedies. In the end, the ombudsman serves as a court-based public resource and supports the appropriate use of established complaint mechanisms. More court accountability is ensured by giving the public more access to both well-established complaint procedures and a court-based resource for problem-solving.

However, impunity is not synonymous with independence. Law and morality must coexist, according to Lon L. Fuller and Ronald Dworkin, which means that judges should be held responsible for wrongdoing in their capacity as arbiters of justice. The proper venue and procedure for such accountability are frequently at the center of jurisprudential discussions.

COMPARATIVE VIEWS OF THE LAW

The Philippines

In the seminal case of Maceda v. Vasquez (G.R. No. 102781, April 22, 1993), it was decided that the Ombudsman lacked the power to look into Supreme Court justices and other judicial officials unless they had been removed from office through impeachment or another proper judicial disciplinary procedure.

India's Ombudsman

In the name of socioeconomic development, the Indian government has been gaining enormous authority. They perform quasi-legislative and quasi-judicial duties in addition to administrative duties. As a result, there are many opportunities for abuses of authority and administrative excess. As a result, strict oversight of the administration and a grievance resolution process become crucial. Parliament, the executive branch, and the judiciary have failed to keep them under control. Although the courts' oversight of the administration has grown, it is still insufficient.

In order to establish the Ombudsman system, the central government had taken certain actions. The implementation of the ombudsman system in India was suggested by the Administrative Reforms Commission, which was led by Morarji Desai. On October 20, 1966, the commission turned in its report. The commission proposed a plan to establish an ombudsman system in India. Even though the commission drew heavily on other nations' experiences when creating its plans, it was unique in many ways and included a number of unique elements to address India's unique situation, such as a federal structure, parliamentary government with ministerial responsibility, and a population that is significantly larger than other nations with an ombudsman system. The commission's recommendations were adopted by the Indian government. In 1963, during a parliamentary discussion concerning grievance procedures, parliamentarian Laxmi Mall Singhvi came up with the term Lokpal. The Sanskrit terms "Lok" (people) and "Pala" (protector/caretaker) were the origin of the word Lokpal, which means "caretaker of people."

State of Punjab v. Pratap Singh, 1964 SC 72 The Supreme Court has noted that the discretion of the official who has been granted legal authority cannot be replaced by

the courts' own.

Lokpal

The United Progressive Alliance drafted a proposal in 2010 to establish an ombudsman with the responsibility of combating political corruption. Several ministries received the draft to review. It offered a way to lodge grievances against the prime minister.

MPs and ministers. Civil society organizations, however, disapproved of it as a weak body with merely advisory authority.

In order to put pressure on the government to establish an ombudsman with the authority to address corruption in public spaces, as envisioned in the Jan Lokpal Bill, Anna Hazare began an indefinite hunger strike at Jantar Mantar in New Delhi on April 5, 2011. Nationwide demonstrations in support of the fast followed. One day after the government agreed to his demands, on April 9, 2011, the fast came to an end. The government announced in the gazette that a joint committee made up of representatives from the government and civil society would be formed to draft the legislation. Pranab Mukherjee served as the chair of the ten-member Joint Drafting Committee. The committee decided to finish the drafting process by June 30, 2011.

Following a lengthy debate that lasted more than ten hours, the Lokpal Bill was introduced in the Lok Sabha on December 22, 2011, and on the first day of the three-day extended session, on December 27, 2011, it was approved by voice vote. The Constitutional Amendment Bill, which would have made the Lokpal a constitutional body, was defeated in the house, so the Lokpal body was not granted constitutional status.

Executive investigations, such as those conducted by anti-corruption organizations like the Lokpal, are not allowed to reach the Indian judiciary. The only way to look into sitting judges is through impeachment, according to the Judges (Inquiry) Act of 1968.

Britain

As the administrative legal advisers, or lawyers, have been looking for a progressively strong institution to run the company, the Scandinavian Ombudsman establishment has attracted their interest. Sweden laid this basis in 1809. Finland started with the basis in 1909. Denmark and Norway adopted the ombudsman notion in 1953 and 1963 respectively. New Zealand was the first Commonwealth nation bestowed with the status in 1962. England launched the ombudsman institution in 1966; this trend has been followed since then. It was given an Ombudsman framework in 1966. Given India may shortly follow this trend and select the ombudsman institution, it could be instructive for us to examine how the framework has been running in England. Currently available are the first-year reports of the British Ombudsman from 1967; we can use them to pinpoint both the notable characteristics of the workplace and the issues that have developed during that period.

The Parliamentary Commissioner Act of 1967 created the role of parliamentary ombudsman as extra open authority to investigate citizen grievances about ineffective government policies. The statutory officeholder was given the authority to access all required information about a case, to demand that witnesses participate, and to offer complete protection for his reports, so preserving the privacy of every case specifically. "Maladministration" was "bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness, and so on," cabinet minister Richard Crossman said when he presented the enactment in 1966. The concept was attacked at the time of presentation as a protected development that couldn't be accommodated with clerical responsibility to Parliament and that stole an MP's customary role of looking at constituent complaints. Under the new scheme, all objections had to be channeled through MPs who could forward them to the "MP filter," or incomplete response to such analysis. The Ombudsman was appointed by the Crown in line with the terms of the Parliamentary Commissioner Act 1967. The act currently calls for a seven-year term. Actually, there is open competition for the post; a selection committee, sometimes referred to as the interview panel, makes the last choice about a candidate for it. The chairman of the Public Administration Select Committee takes part in the process; the panel is supported by an outside assessor from the Public Appar mentation Commissioner's office to ensure the appointment follows the Commissioner's Code of Practice.

Complaints against judges are handled by the UK Judicial Conduct Investigations Office; the Parliamentary Ombudsman has no role in this regard. The emphasis is on preserving autonomy by means of internal disciplinary processes of the court.

USA

Although the idea of an ombudsman has developed significantly in the US, it has yet to infiltrate the local government and administrative agencies of every state, with the exception of Hawaii, Nebraska, and Oregon. Even in a developed nation like the US, since 1963, a number of bills have been introduced in Congress to establish an agency based on the principles of the Ombudsman concept. However, for some reason, these bills were never passed, and the idea remained only that—a concept. The reason given by renowned jurist Gellhorn is that US congressmen believe that the creation of such an agency would only serve to take away their authority and the position they have earned as administration officers, who view it as their exclusive right to represent their constituents and address public complaints. Despite all of these problems with the ombudsman's foundation, some congressional organizations and other grievance cells, like the police review boards, discharge their duties in accordance with the ombudsman's principles.

African Nations

Tanzania became the first nation in Africa to create the institution under the name Permanent Commission of Enquiry (PCE) after the 1965 report of the Presidential Commission on the Establishment of a One-Party State (the

Presidential Commission) advised the PCE to be established as a protection against the arbitrary use of the powers granted to this officer. More complaints per capita than any other foundation of its type on the continent, the PCE started operations in 1966 and today manages over 3000 complaints yearly.

Zambia was the next African country to establish the workplace. A Commission for Investigations (CFI) was established by the 1973 Constitution and began operations in 1974. An average of 550 cases are handled annually, but staffing and budgetary constraints continue to hinder adequate aid to the general public, and many cases remain unresolved for years. 33 In addition, the lack of transportation options has prevented the CFI from operating outside of the core urban areas.

China

China had concentrated on creating an office that revolved around ombudsmen even before the Maoist Civilization. The Tsin Dynasty founded an office in 221 BC called "Control Yuan," which is still in existence in Taiwan. There are four distinct institutions in various locations: the Ministry of Supervision in Mainland China, the Ombudsman in Hong Kong, the Commission against Corruption in Macau, and, last but not least, the Control Yuan in Taiwan.

CONSTITUTIONAL INTERPRETATION AND LEGAL DOCTRINE

Power Separation

The principle of separation of powers stipulates that the executive branch, including the ombudsman, shall not encroach upon judicial functions. In this context, permitting the ombudsman to probe a judge may be perceived as a violation of this precept. The ombudsman office has a twin responsibility of securing support from both the public and the government. As one observer remarked, it is crucial for the office to "earn and sustain the respect of government through its rationality." In the absence of this, it will likely be disregarded at best and derided at worst. Twenty ombudsman offices are state entities, dependent on public finance and requiring political backing for sustained financial support. Consequently, they find themselves in a precarious situation of scrutinizing the government while depending on its financial support. This may pose a challenge to the office's autonomy and general credibility, typically addressed through a combination of institutional arrangements. It is essential to guarantee sufficient protection for the office's existence. Therefore, it is essential to delineate the scope and authority of a governmental ombudsman office in enabling law. The procedure for appointing and dismissing the director of the ombudsman office must be explicitly delineated. The director must get enough compensation and favourable working circumstances, along with freedom from prosecution during their tenure. It is advisable to associate these conditions with those of a suitable high judicial authority.

Balances and Checks

Nevertheless, due process ensures that no public official may escape scrutiny. Thus, it is necessary to find a middle ground in the area of jurisprudence between interference and supervision. One check and balance are the system of internal disciplinary procedures and judicial review. Transparency before Parliament Creating, funding, and supervising the office of the ombudsman is best left to the democratic legislature. Due to its inherent connection to the legislature's conventional function as a watchdog and grievance-handler, the classical ombudsman office is, in reality, an organ of parliament. Parliament, being a heterogeneous organization, is also not likely to be subdued by any one ideology. The office of the ombudsman, like any other government agency, is answerable to the people for the way it spends their tax dollars. Personal Responsibility: Offices of the public ombudsman should be cognizant that its primary purpose is to aid the public and that they are primarily responsible to the individuals they assist. As an example, in Canada, the ombudsman office of British Columbia has implemented a system whereby anyone who are unhappy with the way their claims have been handled can file a complaint. The office's response to the complaint will be examined internally as a result of this. The purpose of this procedure is to make sure the ombudsman office in British Columbia "does what it preaches." To help the public and government agencies evaluate their progress in establishing an efficient ombudsman agency, we have included a checklist in Box IX on the next page. There are two tiers to the criteria, which essentially reflect the two stages of development that an office typically experiences: startup and maturity. In the first, we have the early-stage criteria that an office should aim to meet, and in the second, we have the more intermediate- and long-term considerations. During the first five years, the ombudsman office should make its presence felt to prove its credibility and seriousness to the public and the government. The goal of a newly established office should be to achieve Level 1 compliance, as specified in Box IX, by the third year's end or shortly thereafter. By the time the fifth- or sixth-year rolls around, the office ought to be well on its way to finishing the next level. The purpose of the checklist is to highlight the fact that effective ombudsman offices develop over time; it is not intended to imply that one set of effectiveness criteria is more significant than the other. Like many other government agencies, ombudsman offices lack sophisticated methods for determining whether their operations or projects are effective. The first is that it is not easy to assess accountability schemes. To continue, ombudsman agencies appear to be against comprehensive reviews. Evaluating a program that serves the interests of average citizens is even opposed by some offices. However, if ombudsman offices cannot prove that they are effective, they will not be able to win and keep the public's support. Classifying the ombudsman office's goals into outputs, outcomes, and impacts is one way to assess their efficacy. Typically, outputs are services that are provided in the near or immediate term. They can be measured with ease. In human terms, outcomes are what programs' implications are.

Rule of Law

The rule of law, a fundamental principle of constitutional

democracies, requires that all public authorities, including judicial members, are accountable to legal scrutiny. Nonetheless, such examination must conform to legally mandated protocols to maintain the integrity and autonomy of public institutions. The relationship between the legislature and the ombudsman is explicitly defined through enabling law. The legislature possesses the power to nominate and dismiss the ombudsman, who functions as an autonomous body answerable to parliament via routine reporting requirements and compliance with defined performance criteria. A committed parliamentary oversight committee with explicitly delineated responsibilities guarantees checks and balances, while the ombudsman collaborates with the legislature in a cooperative, non-confrontational way, assisting legislators in addressing grievances without becoming embroiled in party politics. To uphold credibility and efficacy, the ombudsman must have constitutional or statutory authority, exhibit neutrality and impartiality, possess stable tenure, and have extensive investigation powers, including the ability to independently initiate complaints. The office flourishes due to the ombudsman's personal reputation, the adaptability of informal dispute settlement techniques, and a proactive problem-solving strategy. Furthermore, the capacity to recommend, oversee, and affect corrective measures bolsters institutional trust and public compliance. Visibility, timely case management, and public trust—anchored in transparency and openness—are essential for the office's legitimacy. At the secondary level, structural and functional efficiency is guaranteed by the ombudsman's significant governmental position, sufficient resources, proficient personnel, autonomy in recruiting and financial affairs, and contemporary administrative systems. The ability to perform research, engage in systematic investigations, and ensure visibility—particularly for neglected communities—enhances its impact. The ombudsman's fundamental role in strengthening democratic governance is characterized by a robust reporting mechanism, constructive partnerships with government and civil society, the authority to escalate complaints, and a strong sense of public accountability through parliamentary scrutiny.

ANALYSIS: OVERSIGHT MODELS BASED ON JURISPRUDENCE

Three models of judicial officer oversight exist:

- Judicial councils or supreme courts (such as those in India and the UK) are solely responsible for the Internal Oversight Model.
- Both judicial and non-judicial actors are included in the hybrid oversight model (e.g., South Africa's Judicial Service Commission).
- External Oversight Model: Judicial conduct is supervised by an ombudsman or similar body (rare and controversial).
- The internal or hybrid model is supported by most legal theorists and jurisdictions in order to maintain independence while allowing for accountability.

DOCTRINAL SYNTHESIS AND CASE LAW

According to jurisprudence, the ombudsman cannot look into or bring charges against active judges unless they are first removed or go through judicial disciplinary procedures. The judiciary has continuously distinguished between internal judicial discipline and external executive oversight.

Important cases such as Maceda v. Vasquez and In Re: Justice C.S. Karnan (India, 2017) demonstrate the judiciary's stance that executive investigations into active judges are in violation of the separation of powers principle.

Union of India v. Dinesh Trivedi

As highlighted in the **Vohra Committee Report** (1993), the **Supreme Court of India** recommended the establishment of an ombudsman-like institution to oversee investigations into the nexus between criminals and individuals in positions of political and administrative power. The Court suggested that the **President of India**, in consultation with the **Prime Minister** and the **Speaker of the Lok Sabha**, should appoint a high-level committee to supervise such investigations, especially where linkages extended to bureaucrats, media personnel, and members of the judiciary.

The **Lokpal Bill**, enacted under **Article 252 of the Indian Constitution**, leverages the provision allowing Parliament to legislate for two or more states with their consent, and permits other states to adopt the same law subsequently. Despite repeated attempts, a **national-level Lokpal (Ombudsman)** has not been fully operationalized. However, several Indian states have taken the initiative to establish **Lokayukta** institutions through legislative enactments. In some of these states, **Uplokayuktas** have also been appointed to strengthen the institutional mechanism.

As of now, the states of **Andhra Pradesh, Arunachal Pradesh, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura,** and **West Bengal** do not have functioning Lokayuktas. The **first state** to establish a Lokayukta was **Maharashtra** under the *Maharashtra Lokayukta and Uplokayukta Act, 1971*.

Case laws:

The Lokayukt is usually a retired Supreme Court judge, a retired chief justice, or a retired High Court judge, as per state acts. He is appointed by the governor following consultation with the opposition leader, the chief minister, and the chief justice of the relevant high court. Since only he is more equipped to suggest names for retired chief justices or judges, the Lokayukt's view is given precedence during this process. The Lokayukt is appointed for a period of five or six years and is entitled to the same pay, benefits, and privileges as a judge or chief justice when he retired. Though complaints against ministers and officers of the rank of secretary are normally handled by the Lokayukt, several states additionally allow for the appointment of an Uplokayukt to divide the duty.

In *State of Madhya Pradesh v. M.P. Special Police Establishment* (2004), the Supreme Court held that the Governor holds the constitutional authority to independently sanction the prosecution of a Chief Minister or other ministers, particularly in cases where there exists a legitimate apprehension of bias within the Council of Ministers. The Court emphasized that such gubernatorial discretion remains valid even if the Council's decision to deny sanction is deemed unreasonable or based on an improper consideration of facts. This judgment reinforces the independence of the Governor's role in safeguarding constitutional accountability in instances of ministerial misconduct.

The Supreme Court, in Justice K.P. Mohapatra v. Ram Chandra Nayak (2002), while interpreting Section 7 of the Orissa Lokpal and Lokayukta Act, 1995, underscored the essential role of the Lokayukta in upholding administrative integrity. According to the Court, the Lokayukta's function is crucial in uncovering maladministration as described under Section 2(h) of the Act, thereby enabling appropriate action against erring officials. The Court further affirmed that the nature of the inquiry undertaken by the Lokpal is quasi-judicial, lending it a unique stature among administrative oversight mechanisms.

CONCLUSION AND SUGGESTIONS

After carefully examining all the problems and complexity associated with the Ombudsman concept's conception, not only in India but also internationally, it became evident that the several political and legal hurdles acting as roadblocks cannot be disregarded. Regarding the institution's establishment in India, it has become difficult for a developing nation like India to effectively establish an institution of this kind due to many variations in the political, social, and geographical conditions that must be overcome to create a much better and more influential environment for the establishment of the institution.

First and most importantly, legislators have to keep in mind that this concept has only been successful in geographically small countries thus far, thus it is quite tough for a big country like India to overcome the obstacles related with establishing an ombudsman. Given the abundance of villages, an entity like this almost cannot handle or even solve the problems of injured people.

Second, unlike those of the United Kingdom or New Zealand, the Indian Constitution is a federal one. Consequently, the ombudsman's office merely advises the government on the appropriate course of action depending on every individual instance; it does not let citizens assert their rights. Such actions imply that the ombudsman is a useless institution since people still want to visit court instead of approach ombudsmen.

The struggle against the roots of corruption in the administrative structure has limited the reach of ombudsmen in our nation; however, there are some lacunae and gaps in the administrative wing that ought to be corrected. Thirdly, corruption has happened at every tier of a nation like India's government structure.

Fourth, the disagreement among India's political parties is the key factor for Lokpal's non-establishment yet. Since the "Lokpal and Lokayuktas Act, 2013" was approved more than six years have passed, although only sixteen states have effectively formed Lokayuktas and no Lokpal has been named. Political influence is responsible for this since the committees involved in the appointment process consist of members of political parties, hence the criteria for selecting members—that which says the candidate must be a "eminent person or a person with integrity"—have failed miserably since there are no standards to ascertain the ideal candidate for the post.

"It is in view of the widespread corruption and misbehaviour that even the establishment of many ombudsmen would prove to be a failure." In this sense, Justice P.B. Mukherjee said shortly after the Ombudsman's founding that another analogous organization for the governance of the current Ombudsman—that is, the Lokpal and Lokayuktas—will be necessary. One of the main reasons the basis of Lokpal was established was probably the rejection of the court from entering the Lokpal purview. Then there is missing the established support in the form of a constitutional underpinning needed by a developing entity like Lokpal. Apart from this, openness has to be kept in the Lokpal and Lokayuktas appointments to inspire the confidence of the people in this government. Many responsibility systems also have to be used to help to lower the corruption rate, at least inside the government's administrative branches. It is not enough just to establish Lokpal in itself. Depending on which people are asking for a Lokpal, the legislature should handle the corresponding problems. Just adding to the quality of intelligent organizations will help to expand the size of the administration; yet, it will not actually improve the governance and management. Letter and spirit should reflect the motto the government of "less government and more governance" embraced. Unless every public servant starts working ethically, no outside pressure will be successful.

According to the jurisprudential concept of judicial independence, any monitoring of judges has to occur either inside the court or via constitutional procedures like impeachment. This article comes to the conclusion that although the ombudsman is necessary in preserving administrative responsibility, its authority over active judicial officials is constitutionally constrained.

Suggestions:

- Enhance internal judicial accountability mechanisms.
- Ensure that judicial disciplinary bodies function with transparency.
- To prevent jurisdictional conflicts between the judiciary and the Ombudsman, delineate more explicit statutory boundaries.
- Foster public confidence by delivering consistent reports and ensuring accessible avenues for grievances.

REFERENCES

1. Administrative Reforms Commission. (1966). *Interim report on problems of citizen's grievances*. Government of India.
2. Government of India. (1968). *The Lokpal and Lokayukta Bill, 1968* (Bill No. 51 of 1968).
3. Government of India. (2013). *The Lokpal and Lokayuktas Act, 2013*.
4. United Kingdom. (1962). *Parliamentary Commissioner (Ombudsman) Act 1962*, §§ 4–5, proviso clause (a).
5. Government of India. (2011). *The Lokpal and Lokayuktas Bill, 2011*, §§ 25–27, 29, & 32.
6. United Kingdom. (1967). *Parliamentary Commissioner Act 1967*, subsections 2A & 2B, as inserted by Schedule 8 of SI 2006/1031.
7. House of Commons Debates. (1966, October 18). *Hansard*, vol. 734, col. 51.
8. Permanent Commission of Enquiry. (n.d.). *Annual reports*. Government of Tanzania.
9. Commission for Investigations. (1982). *Annual report*. Government of Zambia.
10. Philippines Supreme Court. (n.d.). *Maceda v. Vasquez*, G.R. No. 102781.
11. Supreme Court of India. (2017). *In Re: Justice C.S. Karnan*.
12. Government of India. (1968). *The Judges (Inquiry) Act, 1968*.
13. United Kingdom. (2005). *Constitutional Reform Act, 2005*.
14. Constitution of India. Art. 124.
15. Constitution of the Republic of the Philippines. Art. XI, Sec. 13.
16. Fuller, L. L. (1964). *The morality of law*. Yale University Press.
17. Dworkin, R. (1986). *Law's empire*. Harvard University Press.
18. Montesquieu. (1989). *The spirit of the laws* (A. M. Cohler, B. C. Miller, & H. S. Stone, Trans.). Cambridge University Press. (Original work published 1748)
19. Shukla, V. S. (1967). The ombudsman hysteria. *Supreme Court Journal*, *1*, 84–89.
20. Mukharji, P. (1984). Grievance-man in the Indian administrative system: On ombudsman, lokayukta and lokpal. In T. N. Chaturvedi & S. N. Sadasivan (Eds.), *Citizen and administration* (p. 92). Indian Institute of Public Administration.
21. Mumba, F. N. J. (1995). The ombudsman: The need for protection and control. In N. Lewis & S. S. Singh (Eds.), *Ombudsmen: India and the world community* (p. 37). Indian Institute of Public Administration, British Council Division and British High Commission.
22. Jain, M. P. (1972). The first year of ombudsman in England. *Journal of the Indian Law Institute*, *14*(2), 159–186.
23. Gellhorn, W. (1966). *When Americans complain*. Harvard University Press.
24. Norton, P. M. (1973). The Tanzanian ombudsman. *International and Comparative Law Quarterly*, *22*, 603–631. https://doi.org/10.1093/iclqaj/22.3.603 *(add DOI if available)*
25. Sharan, S. (1971). Ombudsman in India. *Indian Journal of Political Science*, *32*, 158–174.
26. Hatchard, J. (1986). The institution of the ombudsman in Africa with special reference to Zimbabwe. *International and Comparative Law Quarterly*, *35*, 255–270. https://doi.org/10.1017/S0020589300052664
27. Legal Service India. (n.d.). *Lokpal*. https://www.legalserviceindia.com/legal/article-50-lokpal.html
28. DRISHTI IAS. (n.d.). *Lokpal and Lokayukta*. https://www.drishtiias.com/important-institutions/drishti-specials-important-institutions-national-institutions/lokpal-lokayukta-ombudsman-upsc-governance-transparency
29. GKToday. (n.d.). *Lokpal and Lokayukta Act, 2013*. https://www.gktoday.in/gk/lokpal-and-lokayukta-act-2013
30. The Hindu. (n.d.). *Salient features of Lokpal, Lokayuktas Bill*. https://www.thehindu.com/news/national/salient-features-of-lokpal-lokayuktas-bill/article5474256.ece
31. Subhashini. (2015). *Institution of ombudsman – A legislative and judicial outlook*. *Academike*. https://www.lawctopus.com/academike/institution-ombudsman-legislative-judicial-outlook
32. INSIGHTS IAS. (2019, March 19). *Appointment of Lokpal*. https://www.insightsonindia.com/2019/03/19/appointment-of-lokpal-2
33. Gay, O. (n.d.). *The ombudsman – The developing role in the UK*. Parliamentary and Constitution Centre, House of Commons Library.
34. Shodhganga. (n.d.). *Chapter 4*. https://shodhganga.inflibnet.ac.in/bitstream/10603/209431/11/11_chapter%204.pdf
35. Shodhganga. (n.d.). *Chapter 1*. https://shodhganga.inflibnet.ac.in/bitstream/10603/183769/6/05%20chapter%201.pdf
36. University of Pennsylvania. (n.d.). *Scholarship at Penn Law*. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1958&context=jil