

OMBUDSMAN: AN INTRODUCTION

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ORIGIN AND EVOLUTION

The figure of Ombudsman, with its current characteristics, owes its origin from Sweden, however, its traces may be found in ancient history. In this regards, Dr. Pickle, Director General of the Austrian Ombudsman's Office has made the following observation in his renowned paperⁱ:

“Institution to investigate complaints can only be seen in the context of public administration; hence their history is also the history of public administration as a whole. It goes back to the Koran. In the Koran itself the term ‘administration’ is not used, but in many of its verses the principles of political and administrative system are expounded. Justice is one of the basic principles of Islamic Ideology.

Before the times of Prophet Muhammad (PBUH) there was no administration in the proper sense of the word. It was the Prophet who first introduced administrative authorities. He appointed governors of the provinces, judges and tax collectors. They were all accountable to the Prophet. We have no report of complaints about these institutions. As essential principles of government and administration, the Prophet bequeathed trust, justice and effectiveness as well the combination of authority with responsibility.

It was Omer, Second Caliph of Islam, who created the Institution of Mohtasibⁱⁱ. He enjoyed complete

independence and functioned within the framework of an institution called ‘hisbah’. Its role was to ensure the observance of religious principles in daily life. In Egypt this institution existed up to the middle of the 19th century. An interesting fact in this context is that the institution of ‘hisbah’ and its functions was also adopted by the Crusaders in Jerusalem; they even used the even used the Arab world ‘Mohtasib’ although they changed it into ‘Mathessep’.ⁱⁱⁱ

2. Hazrat Ali, forth Caliph of Islam, in his famous epistle to Malik Ashtar, the Governor of Egypt, stressed the very fact in the following manner: -

“Out of your hours of work fix a time for complaints and for those who want to approach you with their grievances. For this purpose you must arrange public audience for them, and during this audience, for the sake of God, treat them with kindness, courtesy and respect. Do not let your army and police be in the audience hall at such a time so that those who have grievances against your government may speak to you freely, unreservedly and without fear. All this is a necessary factor for your rule because I have often heard the Prophet (Peace of God be upon him) saying: “that nation or government cannot achieve salvation where the rights of the depressed, destitute and suppressed are not guarded, and where mighty and powerful persons are not forced to accede to these rights”.^{iv}

3. During the Abbasids era (750-847), complaint handling agencies called “Diwan-al-Mazalim”^v were established. Its function was to examine complaints

brought by the public against government officials. The institution was headed by a senior judge responsible for examining the grievances.

4. The genesis of the institution may also be found in **Sparta and Athens**, where the office of the "Ephore" and the "Euthynoi", respectively controlled the activities performed by the officials of government and municipal actions. The **Romans** installed an officer called the 'tribune' to protect the interests and rights of the plebeians from the patricians. In **China**, during the Yu and Sun dynasty, an officer called 'Yuan' was appointed to report the voice of the people to the Emperor and to announce the Emperor's decrees to the people^{vi}. The **Persian Empire**, King Cyrus charged the "O Olho de Rei" with the duty to supervise the activity of all his officials. During the XV century, the Council of the Ten, in **Venice**, had the mandate to control the bureaucratic excesses committed in the city.

5. During his exile in Turkey, the King of Sweden, Charles XII, observed the working of Dewan-i-Mazalim. On restoration, the King ordered to establish a similar institution in Sweden^{vii}. In Sweden the office was institutionalized in 1809 with the title of *Justitieombudsman*. According to Ibrahim al-Wahab^{viii} "of course one could not draw definite conclusion regarding the origin of any institution anywhere But being aware of the history of complaint handling in the Islamic law system and the fact that during the time of King Charles XII in Turkey this system was existing, the influence seems to be evident".

6. 'Ombudsman'^{ix} is an old Swedish word that has been used for centuries to describe a person who represents or protects the interests of another. The word was originally derived from medieval Germanic tribes where the term was applied to a third party whose task was to collect fines from remorseful culprit families and give them to the aggrieved families of victims (Kircheiner, 1983). The part word, 'man' is taken directly from Swedish (the old Norse word was 'umbodhsmaðr') and does not necessarily mean that the holder be of the male gender. At

present, there are several women, who are part of ombudsman community worldwide.^x

7. In Sweden, the ombudsman office was established by the Parliament to assist it in its dealings with the Executive and the Judiciary. Apparently, it may be considered that the Riksdag (Swedish Parliament) felt inability to satisfactorily exercise its oversight on the activities of other branches of government. In order to carry out its role as representative of the people, the Swedish Parliament felt that it needed an officer who could actively deal with complaints made by the public about action being taken by Executive and the Judiciary. In addition, the following key elements of the Swedish form of government also led to the establishment of ombudsman office: -

- a. There is no concept of Ministerial responsibility such as exists in Parliaments based on the Westminster system, where the minister is chosen from the members of the Parliament.
- b. In Sweden the Judiciary is a career service that is modeled much more closely on a traditional executive style of decision maker and which therefore lends itself to some of the pressures that exist in any career and promotion based bureaucracy.

SPREAD OF OMBUDSMAN CONCEPT

8. The first Swedish ombudsman was Lars Augustin Mannerheim^{xi}. For more than 100 years, the office remained confined to Sweden and could hardly create any ripple for other countries. Its contagion effect came out in the twentieth century, when it was adopted in other Scandinavian countries, in Finland (1919), Denmark (1955) and Norway (1962). The introduction of the Danish ombudsman, in 1955, marked the beginning of the worldwide interest in the ombudsman schemes^{xii}. After assuming as the first Danish Ombudsman, Professor Stephen Hurwitz, began to write and lecture about his office

in English^{xiii}. This activity stimulated interest, which readily spread in the Anglo-Saxon world as more and more articles began to appear about ombudsmen in English language publications.^{xiv} Professor Larry B Hill has narrated this fact in the following manner: -

“Mindful of the fact that his own countrymen were insufficiently aware of the powers and possibilities of his newly created office, professor Hurwitz energetically engaged in a campaign of public education in his homeland. Early successes as a lecturer abroad created a lively demand for appearances by him at distant places. Responding to that demand, he widened the range of his expository and exhortatory efforts, almost as though he were an apostle of a new faith or perhaps the salesman of an export commodity. His persuasive speeches and writings, well supported by the writings of other enthusiasts, transformed an ancient institution into one seemingly designed specifically to meet current needs”.^{xv}

9. The introduction of an ombudsman in New Zealand, the first common law country, in 1962, sparked off a great deal of interest in the ombudsman concept throughout the world^{xvi}. But the question remains why Westminster like parliamentary democracies, where the ministerial responsibility as well as independent judiciary are significant features, have adopted the institution of Ombudsman. This question warrants a deeper insight into the socio-political and economic conditions of the age, in order to understand the need and justification of this new institution.

10. The concept of the ombudsman evolved during the Swedish enlightenment (1719-72) where democracy, humanitarianism and individual liberty were emphasized against state absolutism, injustice and abuse or misuse of public power (Caiden, 1983). The surge of democratic values placed prime importance upon the personal responsibility of officials towards their citizens.^{xvii} The period

following World War II, ignited considerable discussion in many countries outside Scandinavia, regarding the establishment of a process to examine things undertaken by the administration, alongside and beyond the formal means of redress available through the courts or through Parliament itself, or by means of the Press.^{xviii} The ombudsman institution was established as a reply to the major developments, taking place during the twentieth century. These developments, inter alia, include: -

- a. Over a period of time the legislature delegated more powers to the administration. The increase in the discretionary powers given to the executive, led to a need for additional protection against administrative arbitrariness. In particular, it was felt that there was often no redress for those aggrieved by administrative decisions.
- b. The welfare state models in many countries from the 1930's onward led to very large government bureaucracies. The development of diverse and intricate structure resulted in citizen confusion as to what governmental jurisdiction has the authority to resolve their problems or provide the needed services. Whatever actions, which were taken by the Governments to improve or reorganize their administrations it always resulted in increase in the size and power of the executive. There was growing concern that a simple independent mechanism of redress needed to be evolved for the individual citizen. Professor D C Rowatt has neatly expressed this concern in an article suggesting an Ombudsman Institution in Canada^{xix}: -

“It is quite possible nowadays for a citizen's 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”.
- c. The transition of many countries to democracy and democratic structures of governance over the past two decades has led to the establishment of many more ombudsman offices. While commenting on the usefulness of the institution with respect to transition countries, Sir, John Robertson^{xx} has written: -
- “The Ombudsman institution is seen in those countries as a valuable insurance against falling back into old habits, and an influential oversight organization to ensure that the bureaucracy has a more human face”.
- d. Concern for the protection of human rights, and the growth of public education and participation has also been major elements in the acceptance of ombudsman concept globally.^{xxi}
- e. Another important factor in the spread of ombudsman institution is growing public demand for greater transparency in the process of government. Presently, it is getting impossible that people elect a government and then allow them to govern until the next election. “Complexity in government business, and the wish of people to participate more in decision making processes, which affect the direction of their life, means that citizen need access to information and that governments have an obligation to facilitate transparency and consultation, and to give adequate reasons for their action”^{xxii}.
- f. In October 1991, United Nations held First International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris. The workshop ended up with conclusions, known as Paris Principles. The Principles recognized that there should be such national institutions which can receive and act on complaints of human rights violations. These institutions may seek amicable settlements, inform complainants of their rights and how to seek redress, hear complaints or refer them to competent authorities, and make recommendations to solve human rights problems including by amending laws or other acts that obstruct the free exercise of rights. These Principles have been extremely helpful for governments around the world to understand how to create an independent and impartial institution.
11. The Ombudsman concept provides the safeguard that every citizen will be provided an avenue to voice his concerns and grievances and permit opportunity for resolution prior to seeking remedy within the costly, cumbersome and backlogged judicial system. The informality, low cost, rapidity of action, flexibility, ability to enforce new policy, freedom from elaborate rules and of evidence are the important qualities, which make the ombudsman institution an ideal for the common man to seek relieve against administrative excesses and to get his grievances small or great, redressed without spending money.^{xxiii} The role of the ombudsman is to ensure that all public officials perform their duties with justice, honesty and public responsibility. Thus, the ombudsman became a unique instrument to represent the interests of

citizens, protect basic human rights and improve quality of public administration.

12. The ombudsman concept is one which has grown rapidly in a variety of constitutional settings throughout the world^{xxiv}. According to Roy and Giddings, "Ombudsman nowadays take many different forms, they work in different ways, and they dwell in variety of habitats".^{xxv} In early 1980s, Caiden et al observed in an ombudsman study in the following manner: -

"It is found in old countries and new countries, rich countries and poor countries, capitalist economies and socialist economies, unitary states and federal states, civil regimes and military regimes, states with strong administrative law system and states with weak administrative law systems, presidential and cabinet systems, political systems where legislators enjoy constituents' case work and political systems where they do not".^{xxvi}

13. By the year 2004, the ombudsman office, exists in approximately 120 countries around the world.^{xxvii} Some countries have ombudsman offices at the national and sub-national levels, such as Australia, Argentina, Mexico, Pakistan, Spain and UK, while other nations have ombudsman offices only at the subnational government level, as in Canada, India and Italy. Another interesting aspect of the institution can be seen from the way this public sector institution has been "flatteringly copied" by the private sector.^{xxviii}

VARIOUS TITLES USED FOR OMBUDSMAN

14. A variety of names have been used to represent the ombudsman office in different countries. The titles adopted by various countries connote diversity of shades and focus of ombudsman office. For example, *Defensor del Pueblo* is the title of the ombudsman office in a number of Spanish-speaking countries i.e. Spain, Argentina, Peru and Colombia. *Parliamentary Commissioner for Administration* in Sri

Lanka, United Kingdom, *Médiateur de la République* in France, Gabon, Mauritania, Senegal, *Public Protector* in South Africa, *Protecteur du Citoyen* in Québec, *Volksanwaltschaft* in Austria, *Public Complaints Commission* in Nigeria, *Provedor de Justiça* in Portugal, *Difensore Civico* in Italy, *Investigator-General* in Zambia, *Citizen's Aide* in Iowa, *Wafaqi Mohtasib* in Pakistan, *Lok Ayukta* in India and Board of Grievances in Saudi Arabia, are the titles of some other ombudsman offices around the world. In a number of countries, the protection of human rights is one of the major purposes of the ombudsman office, and this is often reflected in the name of the office. For example, in Guatemala ombudsman is known as *Procurador de los Derechos Humanos* (Counsel of Human Rights), in El Salvador as the *Procurador Para la Defensa de los Derechos Humanos* (Counsel for the Defence of Human Rights), and in Mexico as *Comisión Nacional de Derechos Humanos* (National Commission of Human Rights). Other national level example includes, Plenipotentiary for Human rights in Russia, the Commission on Human Rights and Administrative Justice of Ghana, the Civil Rights Protector of Poland, the Human Rights Ombudsman of Slovenia and the Parliamentary Commissioner for Human Rights in Hungary. The *modus operandi* of ombudsmen, therefore, varies enormously from impartial investigator to enabler-facilitator and broker-negotiator to citizen-advocate.^{xxix}

15. The original Swedish concept of ombudsman has proved remarkably flexible and adaptable. It has been constantly adapted and modified to suit a wide variety of sectors and organizations. There are public sector ombudsmen, created by statute, and private sector ombudsmen, created as voluntary schemes, legislative ombudsmen and executive ombudsmen, all-purpose ombudsmen and specialized ombudsmen. Some ombudsmen can investigate on their own initiative while others can only respond to complaints. Apart from classical ombudsmen, several ombudsmen like institutions exist in private sector. In North America, there are about 100 ombudsman offices in colleges and universities, an estimated 200 in corporations. Three dozen

newspapers have an ombudsman. Nearly 4,000 hospitals have patient ombudsman offices and a great many businesses have client or consumer complaint offices. Each state has a nursing home/long-term care ombudsman structure, and there appear to be about 1,500 part-time and full-time ombudsmen attached to those offices.

16. The vast majority of ombudsmen operate only within a national jurisdiction. European Community Ombudsman, created under the Maastricht Treaty in 1995, enjoys the unique status of being one of the supranational ombudsmen in existence. The European Ombudsman is responsible for investigating complaints of maladministration in the activities of Community institutions or bodies. The World Bank's Inspection Panel provides another example of an international ombudsman-style system. The Inspection Panel was created in 1993 to provide an independent forum for private citizens who believe that they or their interests have been or could be adversely affected by a project financed by the World Bank and to investigate any failures by the Bank to follow its policies and procedures.

CHARACTERISTICS AND OBJECTIVES OF OMBUDSMAN INSTITUTION

17. With the spread of ombudsman concept and its utility, several surrogate institutions have emerged in the private sector, which claim the title of ombudsman. Some scholars^{xxx} drew distinction between, "classical" ombudsman and other kinds of "quasi" or "executive-ombudsman". However, Gellhorn made clear distinction between classical and other agencies performing the ombudsman function. Professor Larry B Hill has enumerated the following characteristics of the pure ombudsman^{xxxi}:

- a. Established as separate entity that is functionally autonomous
- b. Operationally independent of both the legislature and the executive.

- c. Ombudsman is a legally established governmental official.
- d. A monitoring specialist.
- e. Administrative expert and professional.
- f. Non-partisan.
- g. Normatively universalistic.
- h. Client-centered, but not anti-administration.
- i. Popularly accessible and visible.
- j. High status institutions
- k. Have extensive resources to perform his mission.

FUNCTIONS OF OMBUDSMAN

18. The core business of public sector ombudsman remains receiving, investigation and redressal of citizen's complaints related to mal-administration of government agencies or their functionaries. An interesting feature of ombudsman institution is that it does not compete with the courts, or act as a further body to which those unsuccessful in the courts can appeal. The primary function of the Ombudsman is generally to examine:^{xxxii}

- a. A decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations, or is a departure from established practice or procedure, unless it is bona fide and has valid reason; is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory; based on irrelevant grounds; or, involves the exercise of powers or the failure or refusal to do so for reasons of corrupt or improper motives such as bribery, jobbery, favouritism, nepotism, and administrative excesses; and,
- b. Neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

19. Professor Larry Hill^{xxxiii} has described the following six major objectives of the ombudsman institution: -

- a. To right individual wrongs.
- b. To make bureaucracy more humane.
- c. To lessen popular alienation from government.
- d. To prevent abuses by acting as a bureaucratic watchdog.
- e. To vindicate civil servants when unjustly accused, and
- f. To introduce administrative reform.

19. Commenting on the role of Ombudsman, which was challenged in 1970 in Alberta, Chief Justice Milvain said:-

“... the basic purpose of an Ombudsman is provision of a 'watchdog' designed to look into the entire workings of administrative cases. ... [he] can bring the lamp of scrutiny to otherwise dark places even over the resistance of those who would draw the blinds. If [his] scrutiny and reservations are well founded, corrective measure can be taken in due democratic process, if not no harm can be done in looking at that which is good”.^{xxxiv}

20. Mr. Stephen Owen, former ombudsman of British Columbia as well as former President of International Ombudsman Institute, maintains that in keeping with the general principles that it is the proper role of the ombudsman office ‘to strive for the mutually acceptable resolution of a problem rather than necessarily finding of fault or the absence of it’. The office should attempt ‘to provide informal mediation services wherever such an approach may be productive’. This approach, he argues, not only tends to result in greater satisfaction among all parties, but frequently provides a more rapid resolution than a full investigation oriented to a finding of right or wrong. Similarly, Mr. Marten Oosting observes that it is important for the ombudsman to recognize that many of the complaints made by the general public

do not call for a full-scale investigation. What people often want and expect, he suggests, is direct action geared towards solving the problems that gave rise to the grievance. The ultimate responsibility for providing this solution lies with the relevant government body itself. But, he says, the ombudsman can make efforts to bring such solution closer.

EVOLUTION OF OMBUDSMAN FUNCTIONS

21. The increase in both the number and types of ombudsman offices across the globe has also led to significant additions and modifications to its functions. Some of the important changes in ombudsman functions are discussed as follows:

- a. In Sweden, where officials are responsible neither to the Crown nor to Parliament, but are subject to the rule of law, the main functions of the ombudsman, acting on his own initiative and empowered to take legal proceedings against civil servants and judges for breaches of the law was designed to act as prosecutor. With the passage of time the focus of the office became receiving and investigating complaints related to maladministration. Ulf Lundvik, former Swedish ombudsman, pointed out, “the redress of grievances is not main concern of the Ombudsman”. Their main task, he says, remains that of maintaining ‘a good standard within the public service’.
- b. In Denmark, the role of ombudsman, inter alia, was to safeguard law and order for the individual as an appellate institution for citizens who came

- into conflict with the administrative agencies. The ombudsman was meant to be “the protector of the man in the street against injustice, against arbitrariness, and against the abuse of power on the part of the executives”.^{xxxv}
- c. With the introduction of ombudsman office in New Zealand and other Commonwealth countries, the role of ombudsman began to undergo an important change in focus. The principle duty of ombudsman was considered to investigate complaints and where appropriate recommend some form of remedial action. Therefore, the ombudsman’s function became primarily to redress grievances. This is equally true about Pakistan. In UK, the statutory mandate of Parliamentary Commissioner for Administration authorizes him to do no more than investigate and report. Its primary functions have been to secure redress where complaints are justified.
 - d. The shift of emphasis from a primary concern for the quality of public administration to the provision of redress in individual cases of injustice, by no means brought the evolution of the ombudsman’s function to an end. In the word of Professor Kenneth Wiltshire, “the lot of the modern ombudsman is not simply to open the door, the switchboard and the mail each day and respond to complaints which waft in, many of which have common causes elements and generic causes”. He writes, the emphasis of the office is to be “proactive, systemic, and preventative in its orientation”.^{xxxvi}
 - e. The ombudsman offices not only consider individual grievances but also identify ‘systemic’ faults, thereby helping to secure improvements of a general nature as regards working methods and administrative practices and procedures. Martin Oosting,^{xxxvii} has observed that a series of separate investigations occasioned by similar complaints may raise questions about underlying causes. It is one of the ombudsman’s functions to identify these causes, and where possible make recommendations for their prevention.
 - f. Some ombudsmen have gone even further as regards the promotion of good practice and published codes of offering general guidance to government bodies as well as the officials. In Ireland, with the annual report for 1996, the ombudsman issued a document bearing the title, “Ombudsman’s Guide to Standards of Best Practice for Public Servants”. In 1990, the Ombudsman of British Columbia produces an “Administrative Fairness Checklist”, which was to be used in consultation with agencies to review their policies and practices regarding service to the public. Some other examples include, New South Wales’ “The Right Stuff – Tips for making complaints and solving problems – a Toolkit for consumers of community services in NSW” (2004), the Commission for Local Administration in England’s booklet, “Good Administration

- Practices: Guidance on Good Practice 2" (1995), Parliamentary Commissioner's document, "The Ombudsman in Your Files" (1995) and European Union's "Draft Code of Good Administrative Behaviour for European Community Institutions and Bodies".
- g. Many ombudsman offices are empowered to start investigation on their own initiatives, although this power of 'system fixing' has been used sparingly. Jacob Soderman, the European Union Ombudsman, suggests that such 'own motion' powers of investigation may also be used where a number of complaints focuses on a specific administrative authority, or a particular type of administrative activity, providing grounds for thinking that a more general inquiry should be conducted.
 - h. The ombudsman offices have also provided advice to the agencies on dealing with complaints properly. For example, the New South Wales Ombudsman office issued a 293-page compendium entitled "The Complaint Handler's Toolkit" (2000), Australian Commonwealth Ombudsman document, "Good Practice Guide for Effective Complaint Handling" and Commission for Local Government Administration in England's publication, "Devising a Complaints System: Guidance on Good Practice 2".
 - i. Another extension to the range of ombudsman's functions include its new role in the promotion of 'open government'. Most of the ombudsman offices have been authorized to deal with complaints about the way in which public bodies have handled requests for information under the code of practice or relevant legislation operative in the country.
 - j. A number of ombudsmen have also added to their functions a role of policing of codes. One aspect of the generalized task of uncovering instances of governmental corruption assigned to ombudsman offices in the developing world takes the form of responsibility for policing the application of 'leadership codes'. In Papua New Guinea, Uganda and Vanuatu, the duty of ombudsmen include applying the rule of ethical conduct which senior politicians, judges and public officials are required to follow.
 - k. The Australian Commonwealth Ombudsman and NSW ombudsman have the responsibility for auditing telephone intercepts records. Both offices also have the responsibility of protecting 'whistle blowers'. The NSW ombudsman also have witness protection function.
 - l. During the 1970s, the ombudsman offices began to develop an approach to case handling that diverged significantly from 'investigation and report' mode of operation which has characterized the office in earlier years. The ombudsman offices have increasingly focused on the possibility of conciliation, and on helping to achieve an outcome satisfactory to the complainant and the agency concerned as quickly and informally as possible. Stephen

Owen^{xxxviii} maintains that the primary role of ombudsman is 'to strive for the mutually acceptable resolution of a problem rather than necessarily finding of faults or the absence of it', the office should attempt 'to provide informal mediation services wherever such an approach may be productive'.

JURISDICTION OF THE OMBUDSMAN

21. The operational mode of the ombudsman varies greatly according to the activity and environment. However, in essence, there are two models: -

- a. Reactive ombudsman who waits for complaints and acts on what has been brought forward. In Britain, for example, ombudsmen tend to be reactive offices that can only respond to complaints or grievances, the last port of call in a formal complaints procedure.
- b. Proactive ombudsman who seeks out matters of concern, inspects and initiates investigations. In Scandinavia, an ombudsman may initiate action and has an ongoing inspection role, such as the Public Justice Ombudsman who keeps a watchdog eye on public administration and tackles action to ensure acceptable quality and standards are maintained.

CRITERIA USED BY OMBUDSMAN TO JUDGE THE OFFICIAL ACTIONS

22. Ombudsman Offices around the world receive a bulk of complaints each year. Out of these, a large number of complaints are rejected on the ground that they fall outside the ombudsman jurisdiction. Ombudsmen have to operate within the jurisdiction set out in their legislation. Common criteria for accepting or rejecting complaints largely include the following questions:

- a. Is the complaint within the Ombudsman's jurisdiction at all? (A surprising number are not.)
- b. Has the person complaining exhausted the other remedies available to them? (The Ombudsman should be a last resort, not a first port of call.) If not, is it reasonable to expect them to have done so?
- c. Has the complainant sufficient personal interest in the subject matter of the complaint?
- d. Is the matter already before the courts? If so, is it appropriate for the Ombudsman to become involved?
- e. On the face of the complaint, does it appear that the person complaining is not acting in good faith?

23 Ombudsmen apply various criteria for making judgment whether a particular conduct is proper or improper. Some of the important criteria are: -

- a. Whether a particular government action concords or conflicts with statutes and principles, Ideally, an Ombudsman approaches the action broadly and reviews it both in the light of the provisions of the written law, and in the light of unwritten legal principles, as well as, against the standards for good governance.
- b. Investigations of the action in view of the written law include such areas relating to human and constitutional rights, definitions of competence, and provisions governing from procedure and substance.
- c. Investigation of the action in view of the unwritten legal principles (developed in case law and legal doctrine) are equally relevant to the lawfulness of government conduct, and include the principles of: equal treatment for equal cases; reasonableness; proportionality between means and end; legal

- certainty and of legitimate expectations; the requirement to provide reasons for decisions; and, of certain duties of care.
- d. An Ombudsman also uses standards or guidelines for good governance which contribute to the decency of the way the executive authorities act. The standards can be summed up as the imposition of a broad duty of care. These are manifested in certain accepted standards for administrative processes and the conduct of public servants in relation to the public. They include the requirement to act without undue delay; to supply the individual with relevant information; to treat people fairly and respectfully; and, to be unbiased and helpful.
 - e. Finally, the Ombudsman sets standards for the government organization – such as those of coordination, monitoring of progress, protection of the individual's privacy, and accessibility of the authorities.

FEEDBACK ON THE QUALITY OF GOVERNMENT SERVICES

24. The ombudsman office provides not only for individual redress, appeals and dispute resolution, but also an auditing and accountability role. Ombudsmen office can make the political system more responsive to citizens both individually and collectively^{xxxix} (Hyman, 1979, p. 151). An Ombudsman can also contribute significantly to the quality of government, by providing feedback on the administrative performance. This is particularly important for government organizations wishing to perform their functions in a customer-friendly manner. Complaints are signals, constituting a valuable source of information for quality assurance. This feedback can be of particular value for government organizations as they often have a

monopoly of their own and are rarely exposed to the dynamics in the outside world. Observing the criteria for proper conduct developed through the Office of the Ombudsman can, in short, contribute to the rationality and legitimacy of public administration.

25. In this regard, a "negative feedback model of accountability" has been developed^{xl}. The model explains that citizen's complaints are an important source of evaluative feedback on public programs. Taking public laws and policies as statements of community goals, they set out politically agreed upon quantity and quality of life in specific areas. When citizens are disinterested in existing policies or regulations, or service delivery systems fail or are inadequate, citizens are the first to know. In most of the cases citizens have no way to communicate this information to responsible decision-makers except through the very structures which are often root cause of the problems. These structures, when dealing with citizens often exhibit self-servicing interests inimical to resolving the problem. In addition, the bureaucracies are often the only source of information about such issues available to elected representatives and officials. In developed countries the interest groups and political parties identify major issues, but insofar as the average citizen is concerned, particularly in developing countries, many problems are effectively kept out of the decision-making process. In this situation citizen complaints and problems are evaluative judgments that discrepancies exist between the criteria established in public policy and the current operation of the system. Therefore, the demands on a generalized complaint mechanism such as an executive ombudsman are a form of negative feedback. For example, analysis of the data can provide specific "error signals" about where community goals and aspirations are not effectively carried out. In this regard, the negative feedback approach says explicitly: "let the system operate as long as it is working fairly well. We'll listen to the people who pay for it (taxpayers) and those who need to use it (consumers), when they find the system fails them."

26. Furthermore, third-party complaint programs are typically called upon as a last resort, a place to appeal when others fail (Best, 1981). And because they are open to the general public, such mechanisms do not control the nature of their input. Attempts to bias *input* by political elites and organized interest groups can easily be detected. Bureaucratic obfuscation is avoided by establishing programs which are external to bureaucracies and directly accessible by the general public. Thus, the character of demands is determined by individual citizens. Patterns or trends in particularized contacting constitute error signals or negative feedback at the system level. This approach creates a new channel for political demand external to bureaucracies whereby citizens can provide inputs directly to elected officials. Particularized participation mechanisms which operate in this fashion can serve as people's gatekeepers to the general political and administrative channels of the political system, and they can provide elected representatives with an external "window" on the bureaucratic network. When these conditions obtain, a new open channel for political demand is created. Third-party complaint programs become gatekeepers to the political system. A brief example from one such programs follows (Discussion of the advantages and limitations of executive Ombudsmen in this regard are presented later.)

CRITICAL OBSERVATIONS ON OMBUDSMAN SCHEME

27. The most common criticism of the ombudsman system is that the function is not generally well understood. There is relatively limited documentation and information about their work, often confusion and uncertainty about their role, and with the proliferation of ombudsman offices in different sectors, the confusion can be exacerbated. In spite of the key characteristic of accessibility, ombudsman offices are frequently noted for their inaccessibility. Few citizens are aware of the different ombudsman schemes, how to reach them and how to process a grievance. Inaccessibility is the

chief reason why ombudsman offices tend to be under-utilised, especially by the most disadvantaged who are less likely to know of the existence of ombudsman and have more difficulty in registering complaints or grievances. It seems that many ombudsman schemes, particularly in Britain, are hidden by bureaucracy and formality and lack a human face. The question of visibility is linked to more general criticisms of the operational mode of the ombudsman as too reactive, waiting for complaints rather than taking the office to the public or initiating investigations.

28. The ombudsman office is also criticized for the fact that its effectiveness tends to depend upon the character and personality of the ombudsman officer(s) themselves rather than the system as a whole. Regardless of their organizational framework they are a highly personalized institution and success demands an individual or team who are perceived as independent and impartial, with relevant qualifications and in-depth knowledge of the sector, and can command respect and trust from all parties. Of course, such individuals are hard to find.

29. Since the ombudsman's powers lie essentially in recommendation there is a genuine concern that the ombudsman lacks 'teeth'. For instance, the annual report (for many ombudsmen the only public document issued) is often considered an inadequate instrument for influencing administration procedures and practice, informing mass media and educating the public. Moreover, the ombudsman is generally powerless to change or reverse decisions. In fact, some believe that the ombudsman's powers as critic and reformer must be strengthened to influence changes in legislation and policy and not just administrative procedure. The ombudsman should be concerned not merely with laws or codes as they stand, but also as they might be.

The normative function of ombudsmen between citizens, public administration and Courts

<http://egpa-conference2011.org/documents/PSG10/Remac-Langbroek.pdf>

EUROPEAN PARLIAMENT

http://www.uni-mannheim.de/edz/pdf/dg4/POLI117_EN.pdf

- ⁱ “The Ombudsman and Administrative Reforms” by Dr. Pickl.
- ⁱⁱ Mohtasib means a person, who conducts accountability. Its function was to be a guardian of public morals in many fields of life, especially in the towns and above all in the market place. He was the market supervisor, the Sahib as-sup, as well as the settler of disputes.
- ⁱⁱⁱ Quoted from Wafaqi Mohtasib (Ombudsman)’s Annual Report 1990 p.6-7
- ^{iv} Mohtasib (Ombudsman)’s Annual Report. Almost all the reports have quoted this important excerpt of the letter. Also see Nehjul Balagha, a collection of the speeches and writings of Hazarat Ali (AS)
- ^v Diwan means an office, secretariat or an official agency.
- ^{vi} Satyanand, Anand, Growth of the Ombudsman Concept, Journal of South Pacific Law, article 1 of Volume 3, 1999, School of Law, University of south Pacific. Also see Argentine Ombudsman website.
- ^{vii} Wafaqi Mohtasib Annual Report 1998.
- ^{viii} Wafaqi Mohtasib Annual Report 1990.
- ^{ix} An Ombudsman Overview, David Peppiatt, Project Researcher, Briefing Paper for The Ombudsman Project Inter-agency Steering Group Meeting on November 21, 1997 at British Red Cross.
- ^x Satyanand, Anand Judge, Ibid.
- ^{xi} Parliamentary Ombudsman of Finland’ website [http://www.oikeusasiamies.fi/Resource.phx/ea/english/ombudsman/...](http://www.oikeusasiamies.fi/Resource.phx/ea/english/ombudsman/)
- ^{xii} Seneviratne Mary, Ombudsman 2000, professorial inaugural lecture, given on 17 April 2000.
- ^{xiii} Lundvik Ulf, New Zealand, International Anthology of Ombudsman 1983.
- ^{xiv} See S. Hurwitz, “Control of the Administration in Denmark: The Danish Parliamentary Commissioner for Civil and Military Government Administration,” Journal of the International Commission of Jurists (1958); 224-43; also printed in Public Law, 1958, PP 236-53.
- ^{xv} Hill Larry B, “The Model Ombudsman, Institutionalizing New Zealand’s Democratic Experiment”, Princeton University Press, 1976.
- ^{xvi} Seneviratne Mary Ibid.
- ^{xvii} Kirchheiner H.H. “The Ideological Foundation of the Ombudsman Institution”. Ch.2, p.23.
- ^{xviii} Satyanand, Anand Ibid.
- ^{xix} Rowatt, D C, No 28 Canadian Journal of Economics and Political Science. P.543.
- ^{xx} The Ombudsman and the World by Sir John Robertson KCMG CBE, Twenty Years of Commonwealth Ombudsman 1977-1997, Commonwealth Ombudsman, Canberra, June 1997. P.67.
- ^{xxi} D. Rowat, *The Ombudsman Plan* (University Press of America, 1985), at p. 131.
- ^{xxii} Sir John Roberson Ibid.
- ^{xxiii} A Commentary on Ombudsman, Law, Scope and Prospects by Mobeen Ahmed Khan, Asia Law House Karachi. 2001
- ^{xxiv} Satyanand, Anand, Ibid
- ^{xxv} Gregory Roy and Giddings Philip, “The Ombudsman, The Citizen and Parliament”, A History of the Office of the Parliamentary Commissioner for Administration and Health Service Commissioners, Politico’s Publishing, 8 Artillery Row, London, SW1p 1RZ 2002.
- ^{xxvi} Caiden, MacDermot and Sandler, ‘The Institution of the Ombudsman’
- ^{xxvii} International Ombudsman Institute website “www.law.ualberta.ca/centres/ioi/eng/eng_home.html
- ^{xxviii} H. Woolf, Protection of the Public – A New Challenge, Hamlyn Lecture (Stevens, 1990), at p. 87.
- ^{xxix} Mora Atonio, “El Libro Del Defensor Del Pueblo” Defensor Del Pueblo, Madrid 2003. P.185-189
- ^{xxx} Hill, B Larry and Stanley Anderson.

^{xxx} “American Ombudsmen and ‘Wannabe’ Ombudsmen” by Larry B. Hill, Address delivered at the 1997 Spring Meeting of the American Bar Association Section of Administrative Law and Regulatory Practice, Hotel Washington, Washington D.C.

^{xxxii} Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order 1983, Presidential Order No.1 of 1983. (Amended and updated vide Ordinance No. LXXII of 2002)

^{xxxiii} Larry B Hill, *The Model Ombudsman: Institutionalizing New Zealand’s Democratic Experiment* (Princeton, N. J.: Princeton university Press, 1976)

^{xxxiv} Read Ombudsman Act (1970) (72 WWR 176, 190 and 192)

^{xxxv} Lars Nordskov Nielsen, Danish Ombudsman, *International Handbook of Ombudsman* Ch. 3, “Denmark”.

^{xxxvi} Kenneth Wiltshire, Report of the Strategic Review of the Queensland Ombudsman (Queensland Government) 1998, p.32.

^{xxxvii} Formerly President of the International Ombudsman Institute and National Ombudsman of the Netherlands.

^{xxxviii} Former Ombudsman of British Columbia and Former President of International Ombudsman Institute.

^{xxxix} "Participation Through Hot-lines and Citizen's Advocates," by Drew Hyman in S. Langton, ed. *Citizen Participation Perspectives*, Medford, Mass.: Lincoln Filene Center, (1979), P. 151.

^{xl} “Citizen Complaints as Social Indicators: The Negative Feedback Model of Accountability” by Drew Hyman, *The Ombudsman Journal*, November 6, 1987. Website “<http://csisweb.aers.psu.edu/PUBLICATIONS/complaints.htm>”