HOW WATCHDOGS FUNCTION ACROSS THE WORLD

A Quick Look at the Global Best Practices

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"Romania's most powerful politician, Liviu Dragnea, was ordered... to begin serving a three-and-a-half-year prison sentence for abuse of power, upending the political order in the East European country and handing a victory to those who view corruption as the chief threat to the health of the nation," goes a recent story in *The New York Times*.[1]

And in a major setback to accountability in public office, South Korea's former President Park Geun-hye was sentenced to more than two decades in prison last year after being found guilty of corruption.

Loss of integrity in the public sector is a constant refrain. According to a brief on The World Bank website, "corruption erodes trust in government and undermines the social contract. This is cause for concern across the globe, but particularly in contexts of fragility and violence, as corruption fuels and perpetuates the inequalities and discontent that lead to fragility, violent extremism, and conflict."[2]

The brief goes on to explain how the hardest hit is always the poor in this vicious cycle of corruption. It states: "empirical studies have shown that the poor pay the highest percentage of their income in bribes. For example, in Paraguay, the poor pay 12.6 percent of their income to bribes while high-income households pay 6.4 percent. The comparable numbers in Sierra Leone are 13 percent and 3.8 percent respectively. Every stolen dollar, euro, peso, yuan, rupee, or ruble robs the poor of an equal opportunity in life and prevents governments from investing in their human capital."[3]

Ombudsman: A History

There's no denying that corruption lies at the heart of global wealth inequality and is chipping away at the core of democracy like a termite. To combat weak transparency measures and promote good government values, ombudsmen have been set up since the early 19th century. They have not only acted as a link between the citizens and the state but also provided redressal to a variety of grievances while holding governments to account. The earliest ombudsman in the modern world was established in Sweden in 1809, to oversee the government administration. This is the classical public-sector ombudsman which has now proliferated across numerous countries.

The old Norse term *umboosmaor* means representative; which evolved into the Swedish word *umbuds man* and the modern English term ombudsman. It broadly refers to an official dedicated to upholding the rule of law and human rights, as well as protecting the rights of the citizens from administrative abuse. He or she is also charged

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with halting a state, usually democratic, from exercising corrupt governance, autocracy or authoritarianism. Addressing complaints in a neutral, non-partisan and independent manner is usually the job profile of an ombudsman, which resorts to a raft of procedures to rectify systemic failings and plug gaps existing in complaint-resolution mechanisms, both at the individual and collective level.

Although their roles may vary according to national mandates there are various lessons that India can learn from these institutions. Currently, the role of the ombudsman system gains serious relevance for India in the light of retired Supreme Court judge Justice Pinaki Chandra Ghose being appointed as the first Lokpal, the country's anti-corruption ombudsman.

In this article, we have tried to discuss how ombudsmen and human rights institutions work in different countries around the world and their functions. Here's a ready roster of some of the most successful models of ombudsmen from which India can take a leaf.[4]

Types of Ombudsman Models

- Reactive Ombudsman

One of the models of classical ombudsman is the reactive ombudsman, defined by the International Bar Association in 1974, as:

"An office provided for by the Constitution or by an action of the legislature or Parliament and headed by an independent, high-level public official who is responsible to the legislature or Parliament, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action and issue reports."

The classical ombudsman model holds jurisdiction over administrative actions and supervises acts of administrative injustice and nonconformity with the law. Its major responsibility is designed around handling individual complaints and securing justice for aggrieved citizens but its role is not generally proactive.

However, in the modern setting, it may initiate *suo moto* investigations and conduct proceedings against a wrong-doer as well. Sweden had introduced the classical ombudsman in 1809, while Finland also practises the reactive ombudsman model.

- Variegated Ombudsman

The second model, referred to as variegated ombudsman, has way more responsibilities and powers, as compared to the classical variety. This model requires the ombudsman to be more conscious and to actively engage in protecting human rights, while ensuring that justice is served either directly or indirectly. It goes a long way in creating awareness among public and encourages people to contribute towards improving administrative processes. Some government entities in New Zealand operate under the scrutiny of a variegated ombudsman.

- Proactive Ombudsman

The role of a proactive ombudsman is multi-faceted. It is not just in charge of dispensing justice, but is also responsible for initiating reforms for systemic changes. It prioritises proactive standard-setting over expecting the aggrieved to come forward or merely handling the complaints. Australia has certain authorities acting in the capacity of proactive ombudsman.

The Role of an Ombudsman

The ombudsman operates as an independent monitoring body, individual, a group of individuals or an institution. Depending on the requirement of the system, various forms of ombudsman institutions may coexist in a system, dealing with corrupt practices on different fronts. Additionally, this body may also act like any of the models described above or like a hybrid, based on the need of the hour.

The role of the ombudsman in democracies is becoming increasingly significant and the scope of its jurisdiction is expanding. Simultaneously,

there are organisations tracking the status of governance, transparency and accountability in countries around the world. World Justice Project is one such organisation conducting extensive studies globally and ranking countries on numerous indices, including absence of corruption, open government and fundamental rights.

World Justice Project measures how the rule of law is experienced and perceived by the general public by conducting primary data surveys and accordingly prepares a WJP Rule of Law Index.

According to the 2019 WJP Rule of Law Index,[5] India's overall ranking is 68 out of 126 countries. Regrettably, India has gone done the rankings since 2017-18, when it was ranked 62 out of 113 countries. India falls in the Lower Middle-Income Group of the WJP Rule of Law Index and is ranked first in the Open Government parameter. Regionally, in South Asia Region of the WJP Index, among countries forming the Indian sub-continent, India was ranked first in 2017-18, but in 2019 Nepal and Sri Lanka have overtaken it. Hence, it ranks third right now. India also ranks seventh among 30 lower middle-income countries.

The 2019 Index has recorded that more countries have declined in the overall rule of law performance, suggesting that we are globally sliding towards weaker rule of law, authoritarianism and poorer governance. According to Elizabeth Andersen, the Executive Director of the World Justice Project, there's reason to be concerned.[6] "This slide in rule of law in general and checks on government powers in particular is deeply concerning. There is a crucial difference between 'rule by law' and 'rule of law.' In too many countries, laws and legal institutions are being manipulated to undermine rather than uphold the rule of law, even as governments wrap their actions in 'rule of law' rhetoric," she said.

The parameters for the rankings of the rule of law index include constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice. The top rankings, taking into consideration some of the relevant factors, are given in the table in the next page.

Interestingly, developed countries like United States, United Kingdom, Canada and Australia have not made it to the top five on any of the factors of the WJP Rule of Law Index. Thus, a quick study of ombudsman institutions from the top ranking countries will offer deep insights into their real-time functioning. However, unlike India's Lokpal they are not strictly anti-corruption watchdogs. In fact some of these ombudsmen possess powers that help boost human development and empower citizens to exercise their rights. Still, the expertise of these ombudsmen in areas such as improving the quality of governance is hugely inspiring, and can be of great import to India. For a nation currently in the process of making its Lokpal fully operational, an understanding of these mechanisms can alter the landscape of transparency.

Denmark

The *Folketingets Ombudsman*,[7] or the Danish Parliamentary Ombudsman was first established in 1955 to investigate complaints about public administration. It is elected by *Folketing*, the Danish Parliament, and its jurisdiction extends to matters concerning constitutional law, administrative law, and other aspects of public administration, such as access to information, matters of public finance and taxation. The Monitoring Division visits public institutions like prisons, psychiatric institutions and social care homes while the Children's Division visits kids' institutions in order to processes complaints from both children and adults. Apart from self-initiated investigations and inspections, the ombudsman also deals with complaints.

Norway

The *Sivilombudsmannen*,[8] the Norwegian Parliamentary Ombudsman, is appointed by the *Storting*, its Parliament, to protect the rights of individuals and to prevent torture and inhuman treatment meted

Ranking	Constraints on Government Powers	Absence of Corruption	Open Government	Fundamental Rights	Order and Security	Regulatory Enforcement	Civil Justice	Criminal Justice
1.	Denmark	Denmark	Norway	Finland	Singapore	Denmark	Denmark	Finland
2.	Norway	Norway	Finland	Denmark	Denmark	Norway	Netherlands	Denmark
3.	Finland	Singapore	Denmark	Norway	Norway	Singapore	Germany	Norway
4.	Sweden	Sweden	Sweden	Sweden	Hong Kong SAR, China	Netherlands	Norway	Sweden
5.	Netherlands	Finland	Netherlands	Austria	Japan	New Zealand	Singapore	Austria

Source: World Justice Project (2019). The WJP Rule of Law Index 2019.

out in institutions. It looks into complaints and takes up matters *suo moto* as well. Norway also has an equality and anti-discrimination ombudsman, one for children, and a parliamentary ombudsman for the Norwegian armed forces.

Finland

The principal ombudsman institution in Finland is *Eduskunnan oikeusasiamies*,[9] which has been in existence since 1920. It oversees the legality of actions taken by the authorities, primarily by investigating complaints received, without any cost to the complainant. It also investigates a complaint if there are grounds to suspect that an authority or official has acted unlawfully or when the fundamental and human rights have not been appropriately implemented. Anonymous complaints are not entertained by the *Eduskunnan oikeusasiamies* but a complaint may be made on behalf of someone else or with others.

Sweden

The *Justitieombudsmannen* (JO) or *Riksdagens* ombudsman (Swedish Parliamentary Ombudsman)[10] is the first official ombudsman in the modern world. The *Riksdag* or the Swedish Parliament appoints a JO/parliamentary ombudsman specifically to safeguard the citizens from abuse or maladministration of public administrators. The JO is responsible for examining the compliance of public authorities and officials with legal procedures and ensuring fair treatment of citizens The parliamentary ombudsman can issue critical statements and propose that public authorities improve their routines. Sweden has had an ombudsman institution since 1809 and the basic principles of its obligations in office have remained the same. Presently, there are four parliamentary ombudsmen appointed directly by the *Riksdag* for a four-year period, with the power to supervise a number of public authorities.[11]

The Netherlands

The Constitution of the Netherlands mandates the appointment of *Nationale Ombudsman* since 1981.[12] It refers, mediates or investigates the complaints received against government malpractices. An annual report of all the dealings of the *Nationale Ombudsman* is released every year, to the public and presented to the Parliament. The information is then used to improve the functioning of various departments or individual officials.

Austria

Die Volksanwaltschaft,[13] the Austrian ombudsman board, has been the 'human rights house of the Republic of Austria' since 1977. The federal Constitution empowers the three-membered board for protecting and promoting compliance with human rights. The board works in a collegial manner, while the board members are elected by the Austrian Parliament (National Council), *Nationalrat Österreichisches Parlament*. Irrespective of the age, nationality or place of residence, anyone who has been ill-treated by the Austrian public authorities, may lodge a complaint with the board. Since 2012, it has also been responsible for preventive

human rights monitoring. So, it is tasked with not just protecting and promoting human rights but also recognising and rectifying risk factors for human rights infringements at an early stage in the Republic of Austria.

Hong Kong

The Hong Kong Office of the Ombudsman was established in 1989 by The Ombudsman Ordinance, and has been serving the community by monitoring public governance in the region.[14] The office is seeking to improve the quality of public administration through independent, objective and impartial investigations into complaints received and by self-initiated studies. Primarily, grievance redressal and addressing issues arising from maladministration in the public sector are the focus of this office, regardless of the complainant's nationality. It also promotes protection of human rights, fair treatment of individuals by the public sector and efficient services.

New Zealand

Since 1962, the Office of the Ombudsman of New Zealand has acted as an independent authority, helping the community in its dealings with government agencies.[15] It engages in protecting the rights of individuals, such as the disabled community, whistle-blowers, detained individuals, etc. In addition, it guides other state agencies to improve fairness and conducts formal investigations against complaints.

Germany

The German Federal Parliament, *Bundestag*, appoints a Parliamentary Petitions Committee, *Petitionsausschuss Deutscher Bundestag*,[16] the closest contemporary of a modern-day ombudsman. The committee deals with complaints or requests received by the Bundestag and examines whether the intended goals are achieved from specific laws. It also brings up issues concerning the masses or matters related to legal vacuum in the *Bundestag* on its own. Issues pertaining to irregularity in laws are reviewed and deliberated upon by this committee as well. Authorities with similar profiles also exist in various German departments, to deal with sector-specific matters, like public transport, military, and so on. While its structure is similar to an ombudsman, the *Petitionsausschuss Deutscher Bundestag* is merely a sub-committee of the German Parliament.

The Way Ahead

The role of an ombudsman in the current day and age is both multi-pronged and dynamic. As part of an address to the 10th World Conference of the International Ombudsman Institute, Helen Clark, who was the Administrator of the United Nations Development Programme, pointed out that establishment of anti-corruption agencies is the core component of governance reforms in many countries.[17] "Capable anti-corruption agencies are those which are well-resourced, headed by strong leaders with visible integrity and commitment, and situated amongst a network of state and non-state actors who work together on anti-corruption interventions," she said.

However, there are divergent views on the efficacy of ombudsmen in improving the functioning of public administration. On one hand, countries like Singapore and Japan have been excelling in governance in the absence of an ombudsman. However, even in these cases there are cogent arguments to be made in favour of integrity offices.

For instance, in Singapore systemic faults and poor governance issues are dealt through executive and parliamentary agencies directly. Although the country boasts of an independent judiciary which can be approached to promote transparency and responsiveness from public officials, it believes that the judiciary is supposed to serve as only the "last line of defence." In such a scenario, an ombudsman can serve as another adjudicating body through which one can demand a review of a government agency's decision.[18]

Similarly, Japan already has an efficient decision-making and complaint-handling system in place. However, it struggles

to appoint an ombudsman. The reason for this is simple. The Japanese belief system upholds Wa, the Consensus of the People, and considers the establishment of an institution against it an act of disrespect. Although there is no established national or parliamentary ombudsman, the Administrative Evaluation Bureau of Japan has a network of 5000 private citizens commissioned to receive complaints.[19]

Not surprisingly, the ombudsman is increasingly being viewed as integral to monitoring and questioning authorities on behalf of ordinary citizens. Even in non-governmental settings like private companies, universities, non-profit organisations, the role of an internal ombudsperson is seen as vital in handling conflicts or carrying out inquiries into abuses. Following this trajectory, democratic nations too need to step up and introduce neutral bodies that can hold governments and service providers to account. Responding to the dire need for direct accountability, a significant number of countries around the world have already put in place an ombudsman or a similar institution to deal with issues in governance, corruption and violation of rights of the people by public officials.

In the same vein, India's new anti-corruption watchdog should be able to function as the ultimate oversight body for top public officials. A well-functioning Lokpal could boost citizen's efforts in demanding greater integrity from their elected representatives as well as service providers.

(Endnotes)

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