CHAPTER II

OMBUDSMAN: COMPARATIVE EXPERIENCE ABROAD
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Ombudsman: Comparative Experiences Abroad

IMPORTANCE OF OMBUDSMAN

Ombudsman has become a commonly used word. It has roused a new enthusiasm - 'Ombudsmania' and has become sweeping through the democratic countries. Broadly speaking, this parliamentary institution is for investigating complaints from public against administration. In recent years particularly after the World War-II, this institution has been notably adopted by small and big, federal and unitary, parliamentary and presidential and developed and developing states. It has also been adopted for general and specific purposes and in the form of a single Ombudsman or a Commission of Ombudsman.

Sweden is the first model state where the institution of Ombudsman originated in 1809. A century lapsed between the origin of the institution and its first adoption by Finland in 1919. Nearly 33 years after its adoption by Finland, Norway set up the Ombudsman.


FEDERAL STATES

- Australia
- Austria (1971)
- Canada (1967)
- India (1971)
- Switzerland
- United States (1967)
- West Germany

DEVELOPED STATES

SCANDINAVIAN COUNTRIES
- Sweden (1809)
- Finland (1919)
- Norway (1962)
- Denmark (1955)

COMMONWEALTH COUNTRIES
- New Zealand (1962)
- England (1967)

OTHER EUROPEAN & ASIAN COUNTRIES
- Portugal
- Austria (1971)
- Poland (Unusual)
- France
- Philippines
- Italy
- Switzerland
- Israel
- Spain
- Netherlands

DEVELOPING STATES (AFRO-ASIAN)

- India (1971)
- Tanzania (1966)
- Nigeria (1975)
- Dschang
- Guyana
- Mauritius
- Zambia (1973)
- Papua
- New Guinea (1975)
- Pakistan
- Trinidad (1977)
- Tobago (1977)
- Ghana (1980)
- Solomon Islands (1982)

PROVISIONS ADOPTED

1. Hong Kong,
2. Malaysia,
3. Singapore &
4. India (Central Level)

OMBUDSMAN PLAN ADOPTED BUT NO APPOINTMENT IS MADE

1. Dominica 1978,
2. Saint Lucia 1978,
3. Zimbabwe,
for military purpose in 1952. Gradually, it was adopted by Denmark, Norway (for civil affairs) in 1955 and 1962 respectively. Further in the same year New Zealand, the first Commonwealth country set up the institution in a modified form. U.K. became the second Commonwealth country to appoint Parliamentary Commissioner in 1967. Since 1960s the institution has been faster growth in western Hemisphere and Afro-Asian countries.

Evidently, early adoptions of Ombudsman were made mainly in the common-law countries such as New Zealand (1962), Canada (with the first two provincial adoptions in 1967), the U.K. (first adoption in 1967), Australia (first state adoption in 1971, and India (first state adoption in 1971). It is true that the need for such institution was felt in these countries, because they did not have administrative courts like those in Western Europe. But western European countries also made provisions for setting up of Ombudsman. France took up the lead and provided Ombudsman modelled on that of Britain. After the precedence provided by France, a new round of adoption started in Western Europe in 1974 with the creation of Ombudsman by the federating unit of Rhineland-Pfalz of West Germany. Gradually, the institution has been adopted in Switzerland by the canton of Zurich, in Italy by several of its regional governments, and at
the national levels in Portugal, Austria, Netherlands, Ireland and Spain. In Israel an Ombudsman was appointed at the national level in 1971.

Further, it is interesting to note that not only unitary states, but also seven federations of the world have adopted Ombudsman Plan in one or more of the constituent states. Australia adopted in its all states, United States (four States), Switzerland (one Canton), West Germany (One State), India (ten states). To date Austria and Australia are the only federal states that have adopted Ombudsman plan at the national level. Austria provided a model by creating the institution at both national and state levels. Austria, hence, is unusual in that the Ombudsman Scheme was instituted at the national level, with provisions for the states to opt into the scheme. Two of the largest states, Vienna and Salzburg have initiated the institution at the State levels. In India attempts have been made for the adoption of Ombudsman at the Central level.


In so far as developing countries are concerned the first adoptions among the developing countries were in Guyana, Mauritius and Fiji in 1966, 1970 and 1972 respectively. In Jamaica it was adopted in 1978. It was also proposed by respective Governments for Hongkong, Singapore, Malaysia. Recently Pakistan adopted Ombudsman which is designated as 'Wafaqui Mohtasib'. Tanzania and Zambia which are one-party states also adopted collegiate Ombudsman in 1966 and 1973 respectively. In 1970s and 1980s several other developing countries in different parts of the world have adopted Ombudsman plans. Papua New Guinea established a three-person Ombudsman Commission in 1975. In Trinidad-Tobago the scheme was implemented in 1977, and in Ghana an Ombudsman was appointed in 1980. In the Solomon Islands, an Ombudsman Act was passed in 1980 but appointment was made in 1982. In Barbados, only Ombudsman Act was passed in 1980 but no person has been yet appointed. Moreover, Ombudsman-like complaint systems were also established in Nigeria in 1975 and in the Philippines in 1979. Provisions for Parliamentary Ombudsmen have been made in many countries but no appointment was made by mid-1982. These countries comprise Bangladesh where constitutional provisions were made in 1972, but an Act has not been passed until 1980 and an Ombudsman has not been appointed by mid-1982. Also the plans have been provided in the constitutions of Dominica (1978), Saint Lucia (1978) and Zimbabwe. In Srilanka, a parliamentary Commissioner for administration Act was approved in 1981.
To sum up, according to a survey, parliamentary general Ombudsmen have been installed by mid-1982 in 27 countries, 22 of which have plans at the national level. In addition, national plans had been adopted but not yet implemented in six other countries. And in 1983 more than 35 countries around the world have adopted the Ombudsman institution as reported in a recent conference of the Ombudsman Forum of the International Bar Association held in New York in September 1986. In India such offices were in operation in ten states. At central level three proposed Bills for the institution lapsed due to dissolution of respective Lok Sabha. And a fresh Bill for Lokpal was presented to parliament in 1985. Again Government has withdrawn the Bill in early December 1988 with a view to setting up of a Directorate of Public Grievances.

The gradual spread of Ombudsmanic institutions in different countries raises certain important questions. First, what is meant by the concept of Ombudsman, and second, what are the underlying reasons for such worldwide adoptions.

**OFFICE OF THE OMBUDSMAN : DEFINITION, CHARACTERISTICS AND CAUSES OF WORLDWIDE ADOPTION.**

Ombudsman : Its Characteristics

Efforts have been made at the international level to provide a standard meaning to the term Ombudsman.

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For example, the Ombudsman Committee of International Bar Association defined the term as follows:

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

Analysis of the above definition brings out the following characteristic features of the Ombudsman. First, in any political system the Ombudsmanic institution or office is established either by the constitution or by the statute of legislature or Parliament. Second, the incumbent of the office is usually independent, high level public official, and made accountable to the legislature. Third, the Ombudsmanic Official receives complaints from aggrieved persons against Government agencies, government officials and employees. Fourth, he is vested with the power to investigate into the complaints, recommend corrective actions and issue reports.

Thus, as aptly pointed out by William B. Gwyan, the institution of Ombudsman in its ideal form exhibits the characteristic of independence, impartiality, expertise in government, Universal accessibility, power to recommend and publicize, initiative, simplicity and information. It aims at the twin objectives of protection and improvement of the quality of public administration, on the one hand, and protection and psychological security of citizens on the other. To the above characteristics Larry B. Hill adds the characteristics of non-partisanship, client-oriented but not anti-administration outlook, and normatively universalistic appeal.

Functions

The Ombudsman handles cases of grievances harboured by the citizens against the governmental bureaucracy of a state. It investigates into citizens' complaints about bureaucratic action. Hence its mission is to generate complaints against government administration, to use its extensive power or investigation in performing a post-decision administrative audit, to form judgements that criticise or vindicate administrators, and to report publicly its findings and recommendations.


meticulously analyses several roles of Ombudsman social worker, public defender, bureaucratic watch-dog; complex organisation and social movement.¹⁰

Dysfunctional Role

While the functions of Ombudsman in modern society are well recognised, its dysfunctions are also to be noted. Prof. Gellhorn invites our attention to the dysfunctional elements in the role of the institution. First, the existence of Ombudsman institution indicates a sense of timidity among public administrators. In other words, it creates a fear-psychosis in the minds of administrators and thereby it kills their initiative and decreases their effectiveness in enforcement of public policies and programmes. By criticising improper administrative behaviour and exposing misconduct the Ombudsman tends to produce 'hidden costs' for the administration. Awareness that someone is constantly looking over their shoulders causes some public officials to become too timid instead of being too bold.¹¹ Second,

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9. Larry B. Hill, Ibid.


Ombudsman's activities more often tend to increase unnecessary red-tapism. But despite these disadvantages, the institution of Ombudsman has gained a worldwide appeal.

Causes of Worldwide adoption

What can account for the wide popularity and adoption of the institution of Ombudsman? Bernard Frank has ascribed this to the following reasons. Multiplicity of governmental function, (ii) increasing awareness to protect the legal rights of the individual, (iii) inadequacy of existing grievance-mechanism, (iv) providing assistance to legislature in supervision (v) impartial approach (vi) psychological value of watch-dog of people and its educator's role are the causes for adoption in democratic world in a large scale. Apart from it the adoptions are stimulated by the role played by U.N. Conference and International Commission of Jurists as pointed out by Donald C. Rowat.

W.A. Gellhorn and L. Fitzharris Timothy also put forth some other reasons that contributed much to the world-wide adoption of the institution. These factors are discussed below.

BUREAUCRATIC CORRUPTION IN THE THIRD WORLD:

Bureaucratic corruption is the use of public office with its paraphernalia of prestige, influence and power, in order to make gains, which need not be monetary, in breach of laws and regulations. Survey in Africa establishes a belief that there is no harm in using the public office for private gains. And this consensus practice has remarkable repercussion on the bureaucratic setup, political and socio-economic institutions of the developing countries. In traditional society it may also be encouraged by the established stem of kinship and other parochial loyalties. In most emerging nations obligations to kin, tribe, religious sect or local community significantly influence the behaviour of public servants leading them to corrupt practices in order to satisfy their client's demands. Besides, patron-client corruption is also prevalent in parliamentary democracies and developing countries. A patron individual of higher socio-economic status uses his office, influence and resources to provide protection or benefits for a client; his friend of lower status who reciprocates by offering general support and assistance including personal service.


to the patron. Illegitimate transaction is another part of institutionalised corruption. For that matter, in emerging Afro-Asian and pan-American countries an illegal-attitude is prevalent among public servants and citizens. A transaction which does not possess the required elements can be processed and a due transaction is blocked. A job may be secured even when the candidate lacks requisite qualifications in developing countries. Corruption has been so much institutionalized. The gain therefore, of some by corruption is the loss of others. And to get rid of this, Ombudsman is greatly needed by several countries.

**EMERGENCE OF WELFARE IDEAL**:

Socio-political structure of most states have undergone a metamorphosis after the World War-II. And since then some 50 states are newly created and many are liberated from colonialism. Gradually, these countries witnessed the emergence of 'Welfare-state'. Obviously, the modern state has assumed an enormous magnitude of functions as the result of social and welfare legislation. State functionaries are given plethora of powers and discretion. "Power corrupts and absolute power corrupts absolutely". "Where is discretion there is room for arbitrariness". So conflict and friction is inherent between ordinary citizens and those who enjoy power. Safeguard of the individual from maladministration, administrative mistakes and abuse of vast powers is therefore,
greatly needed. This is not only the case with industrially developed countries but also of agrarian developing countries. Hence there appears the justification for the setting up of a grievance-redressal machinery. Apart from that the establishment of independent self government in the recently liberated countries (wherein misuse of power and authority was largely attributed by the nationalist leaders to the tyrannical foreign rule) and consequent misuse of powers and discretion by the native rulers coupled with a greater amount of international exchange of new ideas and institutions contributed substantially to the spread of Ombudsman.  

**VIGILANT ATTITUDE TOWARDS THE PROTECTION OF CITIZENS' LEGAL RIGHTS.**

There has been in the post Second World War period arising consciousness about individual's position. Great emphasis is being laid on his rights under the government at different levels - national, regional and local. But after a few years of gain of independence in many states such as Pakistan there was a trend to infringe democratic rights and freedoms of the citizens. Therefore, additional protection is needed to secure to the individual legal rights against the comprehensive power of bureaucrats and administrators. This fact is realised.

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by most states after 1962 and the Ombudsman was looked upon as an instrument for protecting the rights of individuals. The institution has not only afforded a fulfilment of the sense of justice and fair play inherent in every individual, but also provides supervision on behalf of the people of the day-to-day activities.

INADEQUACY OF EXISTING MACHINERY FOR FEDRESSAL OF GRIEVANCES.

Legislature and the judiciary exercise control over administration. But now-a-days they are ineffective due to circumstantial reasons. Legislature, in investigating a charge, is handicapped by experts, funds and its inability to have direct access to files.

"It must rely in most cases upon a reply from the agency or department it is investigating". Further, its role-function is likely to be affected by party-affiliation.

That apart, there are different parliamentary procedures, namely, Adjournment motions, Call Attention motion etc. to check maladministration. In reality, however, these methods lack control, if the ruling party has thumping majority, an invisible force to back every eventuality. The investigation is by the department

against whom the complaint has been made and the reply by the minister is that of his department.

Generally, Courts play a key-role in rectifying abuses by the Government. But justice in courts is dilatory, expensive, protracted and slow-moving. Owing to this one is prepared to bear with injustice than to move the courts. Moreover, Courts sometimes precluded by law from hearing appeals. Review of Acts may also be limited by such questions as to whether the agency acted within its powers, was the ruling supported by substantial evidence or was the action reasonable and not arbitrary.

Administrative Courts also follow procedure of law-courts.

Legal representation will follow the normal rule. Usually such Courts are slow moving. A good deal of delay occur in ensuring judgement. Further rule is that, grievance must concern administrative decision and must initially be brought before local Courts.¹⁷

Often the executive handles cases of grievance. But in essence the executive depends to a great extent on the agency or officials against whom the complaint was made. To add to it, executive complaint-handling system lacks the characteristic of independence.


The world-wide adoption of the institutions has been stimulated by the activities of United Nations and International Commission of Jurists. They took keen interest in the Ombudsman institution. Under their auspices periodic conferences were organised on Human Rights in various parts of the world. From time to time the Commission had prepared articles on the subject. In 1961 its British Section recommended the establishment of Parliamentary Commissioner for Britain, which was created in 1967. Among the effort of the U.N. in propagating the ideas in the 1967 U.N. Seminar in Jamaica, where the Swedish Ombudsman Baxelius acted as a guest expert, is noteworthy.

The Ombudsman Committee of the International Bar Association.

The Ombudsman Committee of the International Bar Association, headed by Bernard Frank, has adopted spread of the Ombudsman institution as its chief motto. It has contributed and is in fact contributing significantly to the propagation of the Ombudsman idea on a more or less continuous basis. Through the publication of its monthly News Letter and periodic survey of Ombudsman

and similar complaints handling mechanisms, it keeps those interested in the subject abreast of the latest developments in respect of such institution throughout the world.

ROLE OF INTELLIGENTSIA AND PIONEERS OF THE MOVEMENT

Important research works and writings of Prof. D.C. Rowat, Bernard Frank, Prof. Walter Gellhorn, Prof. Peel, Prof. Anderson, Prof. Brian Chapman, Prof. W.A. Robson, Prof. Weeks, Prof. Hill, William G. Gwyan, Frank Stacey, etc. contributed a lot to the world-wide spread of the Ombudsmanic idea.

PROF. HURWITZ'S CONTRIBUTION

To a certain extent, the efforts of Prof. Hurwitz the first Danish Ombudsman, is responsible for the adoption of the Ombudsman institution by certain states in post World War II period. After 1955, he devoted much strength and energy for promoting the plan, writing in influential Journals, paid visits to far off countries to give talks on the subject, prepared long pamphlet in English on his office. Further, he appeared

19. The classic works of the eminent scholars have been well discussed in first and Second Chapters of the thesis.
on T.V. in Britain to mould the public opinion for creating congenial atmosphere for the establishment of the institution. Some indications of the strength of his impact as pointed out by D.C. Rowat is that after his return he began to receive letters of complaint against British administration. Further, the contributions of Baxelius, Swedish Ombudsman, and Guy Powels, New Zealand's Ombudsmen, are not less significant for the propagation of the Ombudsman idea.

**IMPARTIAL AND EXPERTISE JUSTICE**

Justice is usually administered by courts of law, but such justice has tended to be expensive and dilatory. On the other hand Ombudsman gives the citizen remedy without cost to the complainant or with less cost and without undue delay. Moreover, there is little chance of tension of adversary litigation and of intervention of social magnets. Another advantage is that justice is delivered without the requirement of legal counsels.

**PSYCHOLOGICAL VALUE OF OMBUDSMAN**

The presence of Ombudsman has a psychological value. The office gives the citizens the confidence that there exists a watch-dog for the people to hold government accountable.

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OMBUDSMAN AS CITIZEN'S EDUCATOR

The decision given by an Ombudsman has an educative value for the citizen who is made aware of the reasons for which the decision is given. This aspect is conspicuously absent in administrative justice. Thus Prof. Hurwitz asserted "Since in many instances, the administration gives no reason for its decisions and since the complainant does not often have sufficient knowledge of the basis for the decision in question, he often does not understand it. In many cases, by giving a detailed explanation of the whole matter, it has been possible for the Parliamentary Commissioner to make the complainant understand that the treatment of the case and decision taken, gives no occasion for complaint." 21

ENHANCING THE IMAGE OF PUBLIC ADMINISTRATION

Even from the point of view of protection of services (i.e., administration) such an institution is necessary for protecting their image before the public in its true character and for ensuring that the average citizen is not fed on prejudices, assumptions and false notion of their quality and standard 22. This point has been further emphasized by Prof. Gellhorn thus: "The


Ombudsman's work has indubiously had a tonic effect upon public administration. A number of administrators frankly acknowledge that laziness has diminished because during the past decade an outsider has been in a position to criticise their work methods. Hence, the Ombudsman has an important role to play, albeit in the improvement of public administration. Although he is traditionally able to correct injustice by direct means only in small number of cases, the indirect benefits he provides may be quite important.

To the above circumstantial factors for success, there exists some structural and operational advantages, that make the institution so popular. The institution of Ombudsman, though different in different countries in form, scope and strength of authority and in scale of organisation, remains the same in respect to its prime goal. The goal is the bridging of the gap between administration machinery and the people by facilitating redressal of the latter's grievances. The success of the institution and its faster growth can be ascribed to the following reasons:


First, as an instrument of Parliament, it is free from executive influence in the performance of duties.

Secondly, non-partisan nature in dealing with grievances and allegations is conductive to people's faith in its performance.

Thirdly, its review is quasi-judicial in nature.

Fourthly, smallness as to staffing pattern of the institution provides efficiency and becomes less costly.

Fifthly, investigating method is informal, open and free from legal, administrative technicalities.

CHARACTERISTIC FEATURE OF OMBUDSMAN IN SIX MODEL SYSTEMS

In order to have a better understanding of the institution of 'Ombudsman' we may consider six model systems, four in Sweden, Denmark, Norway and Finland respectively and two respectively in U.K. and New Zealand. However, in light of the importance of this gradually spreading institution, an attempt is made to analyse the characteristic features of the original model of Ombudsman as found in Scandinavian and Commonwealth countries. These six systems deserve study because: (1) Ombudsman institutions are working there for a quite longer time with somewhat success; (2) they served as models for other countries and; (3) they have been institutionalized. Here an analysis is attempted under three heads: (a) Structural features; (b) Procedural features; and (c) Jurisdictional features.
Structural features

Appointment and Removal

One of the prime requisites behind the appointment of Ombudsman is that of independence. Also it is important that he should enjoy the confidence of Parliament, both government Bench and the Opposition. In order to achieve the twin objective of confidence and independence, Ombudsman is appointed either by Parliament or by Parliamentary enactment in consultation with the members of the opposition.

In all the three Scandinavian countries, the Ombudsman is selected by Parliament. Usually their four years' tenure are coterminous with the tenure of respective legislatures. But in case of Sweden, a slight variation is marked. Both Houses of Parliament elect a Board of 48 members and this Board then appoints the Ombudsman.

The Commonwealth countries, such as U.K. and New Zealand follow a different pattern with regard to the appointment of Ombudsman. Formally, appointment is made there by the respective Heads of the State i.e., by the Queen in U.K. on the advice of the Prime Minister and by the Governor General in New Zealand on the recommendation of the House of Representatives.
The initial tenure of Ombudsman as noted above, is four years in Scandinavian countries, three to four years in New Zealand and no fixed term of tenure in case of U.K. except the prescribed upper age limit of 65. In most of the countries incumbents in the office of Ombudsman are eligible for reappointment. In New Zealand, Denmark, Sweden, Norway and Finland, the same persons can be appointed successively for more than once only on the approval of the new Parliament.

As to the removal procedure in Scandinavian countries except Finland, the Ombudsman can be dismissed by respective parliaments. But, in practice, no person is dismissed, at best his term is not renewed. Parliaments in Norway and Denmark dismiss the Ombudsmen, if it has lost confidence in them. Annually, a parliamentary committee reviews the working and efficiency of Ombudsman in Sweden and recommend either for continuance or relieve him from duties. Two-thirds of majority vote of Parliament in Norway is required for the removal of Ombudsman there. The Finnish Parliament can not remove Ombudsman though it appoints him. At best, on the ground of displeasure, it can refrain from re-electing him for the next successive term, on the expiry of the stipulated tenure.

The counter-parts in U.K. and New Zealand are removed respectively by the Queen and Governor-General in consequence of an address from Parliament on the ground of mis-conduct.
Political involvement and party affiliations are essentially prohibited for the Ombudsmen. In all the Scandinavian countries, no Ombudsman can be at the same time a member of the Parliament. In Denmark and Sweden the Ombudsman can not hold any office of profit except with the recommendations of Special Parliamentary Committee and Prime Minister respectively. In all these countries Parliament can prescribe jurisdictional criterion but can not encroach upon the jurisdictional boundary i.e., it can not dictate which case it will investigate or not. Also the Danish Ombudsman Act is categorical as to the independent functioning of the Ombudsman there.

**Qualification and Status**

For the efficient and smooth functioning of the institution of Ombudsman, the incumbent should be a pre-eminent person or a man of letters. Obviously, the nature of function entrusted to it reveal that he should have expertise in legal affairs and have experience in administration. Legal qualification is a must for the appointment to the office of Ombudsman in Scandinavian countries. Usually, Jurists of high status are selected as Ombudsmen in Sweden. In New Zealand the first Ombudsman has been an active legal practitioner, diplomat and administrator. But in U.K. the first Ombudsman is a man of Administrative experience of long standing. As to official status,
Ombudsmen in Denmark, Sweden and Finland enjoy equality of status with that of a judge of Supreme Court. In U.K. his salary is less than that of a High Court Judge and in Norway salaries and pensions of Ombudsman are fixed by the Parliament.

Office Organisation and Staffing Pattern

As to selection of office staff the Ombudsman enjoys full independence in Scandinavian countries. But the strength, salaries and pensions of the members of the staff are generally fixed by the Parliament. Besides, the Ombudsman there enjoys unfettered power with regard to selection and termination of the staff. In Denmark half of the staff i.e., five have legal qualification and official staff do not change with the change of Ombudsman. The Finnish Ombudsman establishment has six part-time assistants and only two permanent employees. Parliamentary Committee in Norway appointed the staff but on the recommendations of the Ombudsman. Salaries of the staff are fixed as determined in the case of Parliament's staff. In New Zealand the practice is that staff of the Ombudsman are approved by the Prime Minister and they do not come under Public Service Act. A peculiar feature of British Parliamentary Commissioner's staff is that legal qualifications for half of the staff are not compulsory.
Procedural Features

Complaint Procedure -

The Ombudsmen in all Scandinavian countries follow a particular pattern of complaint procedure. They receive complaints or start investigation on their own initiative. Thus 'suo-moto' procedure of investigation is unlikely to be followed in U.K. There the Parliamentary Commissioner receives complaints only through the members of House of Commons. As such indirect relation exists between aggrieved citizen and grievance mitigation institution. However, New Zealand Parliamentary Commissioner has both the power of acting on his own initiative and on the reference by a Parliamentary Committee.

A time limit is fixed as to the filing of a complaint in Norway, Denmark, New Zealand and U.K. After the lapse of one year from the date of actual occurrence, no complaint can be filed. Yet the Ombudsman has the discretion to take up the case after the stipulated time. No time limit is fixed in case of Finland and Sweden.

No enabling fee is paid for filing a case before Ombudsman in Scandinavian countries. But to discourage frivolous complaints a fee of one dollar is charged. Moreover, the investigation procedure in Sweden is more
informal and is guided by the principle of 'document publicity'. And the closed investigation files of the office of Ombudsman can also be subjected to public scrutiny. In Scandinavian countries Ombudsman is free to inspect any document and interview any person so as to elicit the information required for the investigation. In New Zealand the Ombudsman has the same access to Government documents unless their disclosure is forbidden by the Attorney-General on the ground of security, defence, international relations, police detection, Cabinet or Cabinet Committee's deliberations. The counter-part in U.K. also wields extensive powers to examine any document and to obtain any evidence from even civil servants and ministers.

Apart from that, in case of refusal to conduct any inquiry Ombudsman will inform the complainant accordingly. In U.K., the Parliamentary Commissioner will inform the Member of Parliament through whom complaint is received.

Relation with Press:

A feature of Ombudsman's relationship with Press in Sweden and Finland is noteworthy. By keeping the door open to the press independence of the institution is

25. 'Document Publicity' is the principle by which a citizen can, subject to certain minimum restrictions, examine any file in a government office without assigning any reason. See R.K. Dhawan, Public Grievance and the Lokpal, page 190.
strengthened. Representatives of Swedish Press Bureau (SPB) regularly visit Ombudsman's Office for giving publicity to the valid complaints and action taken by Ombudsman. This type of developmental Journalism has a tonic effect upon the administration and public grievance handling mechanism.

Incidence of Complaints:

The magnitude of complaints received in Scandinavian countries and New Zealand vary between 1500 and 2000 a year. A good number of complaints are unsuitable for investigation. In Sweden, Denmark, Norway, Finland and New Zealand about 80 to 94% of complaints are not fit for investigation. Within a period of 13 years New Zealand's Ombudsman (i.e. 1962 to 1975) received 8458 cases. Out of that only 56% i.e., 4773 were worthy of investigation and it was found that 10% of the cases were justifiable complaints. In Sweden in 1975, a typical year, total number of complaints received were 3602. 1309 cases were rejected as they lay outside the jurisdictional purview. Out of the rest 34.56% i.e., 1245 cases were investigated but no action was taken. Only in 648 cases action was taken by the Ombudsman.

Further, comparative figures of total number of complaints received by Denmark and U.K. in 1975 were 2009, and 928 (by Parliamentary Commissioner) and 610 (by Health Service Commissioner) respectively. After rejection due to lack of
jurisdiction or frivolous complaints only 233 cases by Danish Ombudsman, 90 by Parliamentary Commissioner (U.K. Ombudsman) and 67 by Health Service Commissioner (U.K. Ombudsman) were disposed of with actions. Coming to Norwegian Ombudsman it is found that during first eight years (1963 to 1970) action was recommended only in 547 cases out of a total of 2351 complaints. The above figures exhibit that out of a good number of complaints a major portion is rejected as they are either outside the jurisdiction or frivolous. Roughly only in 10 to 17% cases action was taken by the Scandinavian and Commonwealth countries.

JURISDICTIONAL FEATURES

1. As to functional role of Ombudsman in the model six systems care is taken to group it into five heads (a) Role of General Supervision of administration and Redress of Grievances (b) Ombudsman's jurisdiction to Governmental Agencies (c) Jurisdictional boundaries, (e) Reporting to Parliament as to activities.

(a) Role of General Supervision of administration and Redress of Grievances.

Ombudsman everywhere is charged with the twin role of protecting rights and liberties of citizens and

26. Percentage of complaints figures unfit for investigation in Sweden, Finland, Denmark, Norway and New Zealand, are 79, 84, 94, 84 and 79 respectively. Source: Figures here quoted are from R.K. Dhawan's Book Public Grievance and Lokpal.
improving administration by pointing out omissions and commissions. However, significant differences with regard to powers and jurisdiction of Ombudsman exist in various countries. In Denmark, Sweden, Finland and Norway, besides redressal of citizens grievances, Ombudsmen provide a general supervision of administration.

In Sweden and Finland the Ombudsmen undertake visits to institutions. While inspecting they have the powers to institute proceedings against public officials who are responsible for maladministration. In case of misuse of public property Norwegian Ombudsman can only recommend criminal proceeding, or disciplinary action. Danish Ombudsman demands the same and Swedish Ombudsman prefers restriction to prosecution. Sweden’s counter-part generally adopt liberal approach in pursuing persuasion method than commending governmental action. In this regard Norwegian Ombudsman is less powerful in so far as he has no power to annul administrative decision and correct administrative misuses. Apart from that it is to be noted that Commonwealth’s New Zealand Ombudsman has wielded vast powers in checking the administration’s acts of omission and commission in reviewing administrative decisions and recommending changes. In essence, his powers are much wider in scope than the powers of Swedish, Danish, Finish and

27. Danish Ombudsman ordered prosecution in the case of abuses committed by the officials. But he refrained from investigating if the official demand the matter to be referred to a Committee under the Civil Services Act.
Norwegian Ombudsman. (b) Ombudsman's jurisdiction and Governmental Agencies.

Ombudsmen in the Scandinavian and Commonwealth countries are competent to supervise judicial, military, civil and local administration. A normal feature of surveillance of the functioning of judicial administration by Ombudsmen is found in Sweden and Finland. Ombudsmen in Denmark, Norway and New Zealand are lacking such supervisory powers. In Sweden the Ombudsman's power extends to the misconduct and corruption of the judges of Supreme Court and subsidiary courts. Along with other complaints against civil servants and clergy of Lutheran Church (who is considered as civil servant in Sweden) he attends to the complaints against judges. As such he appears to be a 'Super Judge' in Sweden. But his jurisdiction does not affect the independence of judiciary in so far as he is not concerned with the judicial decisions. Intentional negligence, action on the part of Judges beyond Regulations and Rules are included in its jurisdiction.

Coming to military administration it is found that single Ombudsman is charged with supervision of civil and military administration in Finland and Denmark. While two separate Ombudsmen are functioning, one for civil and another for military affairs, in Sweden and Norway, Ombudsman of New Zealand is debarred from
investigating into military complaints by section 11(5) of the New Zealand Act.

Ombudsman in Finland only enjoys the extra jurisdiction of supervision of local administration. Gradually in 1957 and 1961 Sweden and Denmark have respectively extended the jurisdiction of Ombudsman to that field. Yet Norwegian Ombudsman and Ombudsman in New Zealand fail to bring local administration under their scope of powers.

Apart from that all government departments, 22 Organisations and Statutory Corporations are included within the jurisdictional boundaries of Ombudsman of Norway. Only special statutory corporations such as New Zealand Broadcasting Corporation and National Airways Corporations are excluded from jurisdictional purview. On the other hand, Parliamentary Commissioner in U.K. has jurisdiction over only specified departments including Ministry of Defence but not Armed Services. Second schedule\textsuperscript{28} of the U.K. Parliamentary Commissioner Act lists 44 departments which come under Ombudsman there. There are specific eleven exclusions as listed in third schedule of the Act with regard to his jurisdiction. It is not competent

\textsuperscript{28} Second Schedule of the Act Lists 44 items such as Ministry of Agriculture, Fisheries and Food, Charity Commission, Civil Service Commission, Commonwealth office, Crown Estate Office, Customs and Excise, Ministry of Defence, Department of Economic Affairs, Ministry of Health and Chancellor's Department.
to supervise health services, hospitals and local
governments and police administration. There are separate
Commissioners for Health and local government to look
after complaints arising out of the Organisations. Further,
complaints against the police were dealt by a separate
three man tribunal.

(c) Jurisdictional Boundaries.

Among the Scandinavian countries in Finland and
Denmark ministers are subject to Ombudsman's jurisdiction.
The only stipulation in Finland is that Ombudsman must
acquire parliamentary approval before proceeding to
prosecute a minister. Ministers in New Zealand, Sweden
and Norway are excluded from the jurisdiction of Ombudsman.
Swedish ministers are concerned with policy formulation
and not with implementation. Collective or individual
responsibility of ministers for the acts done by civil
servants is conspicuously absent there. Moreover, exhaustion

29. In 1969 Government announced the justification for the
institution of Health Commissioner and Commissioner for
Local Government. Under the National Health Services
Reorganisation Act, 1972 a Health Service Commissioner
was established to hear against hospital authorities.

30. Moreover, Under the Acts of 1974 and 1975 Local
Commissioner for Administration were set up in U.K.

31. Royal Commission in 1962 recommended a creation of
complaint handling mechanism against police administra-
tion. Accordingly the Police Act of 1976 provided a
three-man Tribunal consisting of two laymen and Chief
Officer of Police.
of remedies is the general rule in Denmark and not in Norway. The amended Ombudsman Act of 1959 provides that complainant must exhaust all other remedies before appealing to Ombudsman for redressal of grievances.

Parliamentary Commissioner in U.K. also is restricted to have its jurisdiction over the following areas: (1) Matters of international affairs as certified by Ministers; (2) Investigation of crime; (3) No power to decide whether a case will go to court or not; (4) Appointment by Crown or Ministers; (5) Prerogative, Mercy or discretionary power of Monarch in conforming honours and privileges; (6) Matters concerning personnel policy of the departments; (7) commercial relations of the departments with customers or suppliers and (8) matter concerning the safety of the state. On the contrary it has extensive powers to obtain evidence from ministers in investigating a case.

Here again, Norwegian Ombudsman has lacked the power to investigate complaints against discretionary decision unless it is categorically unreasonable. When discretionary power has been used in an undesirable ground, Ombudsman in New Zealand and U.K. came into picture otherwise not. Parliamentary Commissioner in U.K. can not criticise the policy or decision like the Ombudsman in Sweden and Finland. But the Danish Ombudsman can comment on a decision or policy if he thinks it whimsical,
arbitrary, undesirable, or improper. To sum up, Ombudsman's power to touch discretionary decisions arose only if it affected the smooth functioning of the system or if it incurred maladministration.

(c) Reporting to Parliament on Activities.

Another notable feature of Ombudsman in the model systems is the submission of annual report to Parliament. The report invariably includes cases in detail, refusals with justifications, recommendations and corrective measures. However, before reporting to Parliaments Ombudsmen in all the Scandinavian and Commonwealth countries communicate the recommendations to the department concerned. And this power is of paramount importance because no department is interested in earning undue criticism by press and adverse comments on the forum of parliament. The general practice in New Zealand is that before reporting to Parliament the Ombudsman refers the matter to the Prime Minister. The practice in Denmark is that before submitting report to Parliament Ombudsman first submits a report to Parliamentary Committee. Likewise reports of Norwegian and Finish Ombudsman are handled by one of the Parliamentary Committees at first instance and then discussed in Parliament.
Causes of Success

By and large, the Ombudsman system has worked well for a quite long period in all the four Scandinavian countries and in U.K. and New Zealand. What may be the reasons? On analysis five plausible and cogent reasons deserve to be noted.

First, smallness in respect of area, population, number of complaints and staff of the institution is the significant feature of the countries. The surface area of Swedden, Denmark, Norway, Finland and New Zealand are 41,16,148 sq.km, 43,069 sq.km, 3,86,308 sq.km, 3,37,032 sq.km and 2,68,675 sq.km respectively. And corresponding total population of the above five countries are 8.2 m, 5 m, 4.1 m, 4.7 m and 3.1 m. These features are also coupled with smallness in staff and number of complaints dealt by an Ombudsman. As stated above in course of discussion the complaints figures are roughly between 1,500 to 2,000 a year. Excessive complaints essentially decreases its efficiency. For example in Israel with population of 3.5 m, the Commissioner handles some 9,000 complaints and all Ombudsman officials on an average deal with a total of 25,000 complaints per year.

32. Gerald E. Caiden, To Right Wrong: The Ombudsman Experience in Israel (Los Angelos, California, School of Public Administration, University of Southern California, 1977), p.105.
Staff also in all the countries are quite small which centers Co-ordination among them to a fair extent\textsuperscript{33}. Further smallness of complaints provides for personal supervision of Ombudsmen directly\textsuperscript{34}.

Second, all the model countries are quite developed ones in so far economic prosperity and literacy rate is concerned. High rate of literacy breeds sound instead of choked public opinion, strong democratic traditions and high level of political awareness. Also it facilitated a good understanding of policy formulation, policy execution and working of public administration. All the countries are economically prosperous and developed. As such this kind of socio-economic milieu helps in relatively lessening grievances of citizen against administration and in successful operation of Ombudsmanic institutions. Over and above strong democratic traditions helped in the working of Ombudsmen well in the countries.

\textsuperscript{33} In New Zealand the size of the staff has much within 30 employees in all as pointed out in New Zealand, Report of the Ombudsman (Wellington: Government Printer, 1977), p.9. Similarly Finish Ombudsman has six part time assistants & two full time employees. W.A. Gellhorn provides the staff position for Danish Ombudsman i.e. seven legal assistants & five clerical employees and for Norwegian Ombudsman i.e. four legal assistants in Ombudsmen & others Cambridge: Harvard Univ. Press, 1966, p.29 & p.185.

\textsuperscript{34} Complaints envelops even first hand opened by Ombudsman of New Zealand and Sweden. Instance of first is given in Larry B. Hill, The Model Ombudsman : (Princeton: Princeton University Press, 1976); p.329. Instance of Sweden is given by Gellhorn, op.cit., p.211.
Third, existence of other grievance handling machinery.

Besides in the Scandinavian countries institutions of Ombudsman exist with other grievance handling mechanisms. In Sweden and Finland Administrative courts operate.

Presently, four Ombudsman institutions and a number of Ombudsman like institutions are there in Sweden. And two separate Ombudsmen—one for military and another for civil—are working in Sweden and Norway. Above all Chancellor of Justices, appointed by executives are also continuing in Sweden and Finland to "see that the authorities and officials comply with the law and perform their duties so that no person suffers injury to his rights". Except Denmark, the existence of different types of grievance redressing units along with the institutions of Ombudsman minimises the load on the Ombudsmanic systems. Thereby it facilitates a smooth functioning with efficiency, and rendering:

Natural justice.

35. Sweden has both Ombudsman and administrative courts system (established in 1909) which enjoy much wider powers. Finish Supreme Administrative Courts handled as many 106 to 123 appeals during 1932 to 1955. See Gellhorn, op.cit., p.66.

36. Ombudsman - like Organisations are:


Sweden, The Swedish Ombudsman (Fact sheet on Sweden, 1977) pp.1-2 'Ombudsman's obligation is to supervise the observance of Laws in the proceedings of courts & other.
Fourth, strong and sound Civil Service and eminence of Incumbents.

In addition to the above plausible conditions for the success of Ombudsman institution, strong and sound civil service also contribute some in this regard. Obviously, civil service in these countries are not scandalous. Yet the purpose of Ombudsmanic system is to keep administrative units vigilant and alert and refrain from misuse of power and authority on the one hand and providing psychological security to the citizen on the other. Swedish Ombudsman Bexelius once said the importance of the office can not be measured by the scandals it has revealed but rather by the absence of any major scandals. Essentially, the sound civil service system escalates the efficiency, prestige and position of Ombudsman. Side by side existence of Ombudsman makes the Civil Service disciplined and non-scandalous.

Last but not least, the eminence of the incumbents is the most important contributing factor to the successful working of the Ombudsmanic system. The success of Danish and New Zealand Ombudsman institution and subsequent world wide adoption also owe much to the personality and character of Prof. Hurwitz, the first Danish Ombudsman and Sir Guy Pcewels, the first New Zealand Ombudsman.