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KERALA'S OMBUDSMAN AND OTHER QUASI JUDICIAL BODIES FOR GOOD LOCAL GOVERNANCE

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Introduction

The institution of Ombudsman is two centuries old. Sweden, one of the least corrupt countries in the world, is the place of origin of this independent institution.¹ Initially, countries like England, Denmark, Finland, Norway and a few others were influenced and later all over the world.² Today this impartial setup became an identity of nations maintaining a corruption free and clean governance system. India has Lokpal at the centre and Lokayukta at the states with the similar functions of Ombudsman. The ombudsman is incorporated into the Indian system in sector-wise format. Banking Ombudsman³, Insurance Ombudsman⁴, Pension Ombudsman⁵ and others which are appointed by the respective administrative bodies for the purpose of keeping accountability, transparency and integrity.

Apart from these sectorial ombudsmen, the state of Kerala and certain other states introduced the concept of original ombudsman in the local self-governing sector. It is the independence of the local governance system which will fulfill the incredible thoughts of Gandhi and lead this country to stand among the global powers. Kerala instituted the ombudsman by way of an amendment in the Panchayath Raj Act in 2001. But the institution started functioning in 2000. It is a single member body with a Retired Judge of the High Court as its Chairman.

¹ As per the Corruption Perceptions Index

² Yash Dhawan and Vidhi Marwaha, Position of Ombudsman in India, International Journal of Law, Management & Humanities, [Vol. 3 Iss 2] <https://www.ijlmh.com/wp-content/uploads/2020/05/Position-of-ombudsman-in-India-2.pdf> (Last Accessed 20th July 2025)

³ Governed by the Reserve Bank – Integrated Ombudsman Scheme, 2021

⁴ Governed by the Insurance Ombudsman Rules, 2017

⁵ Governed by PFRDA's Redressal of Subscriber Grievance Regulations, 2015.

1. Evolution

Sweden keeps their position high always in the Corruption Perception Index.⁶ One of the major reasons for this is the presence of the proctoral role of Ombudsman. It was in 1713, King Charles XII created a new office in Sweden with the title the Highest Ombudsman. He was empowered to execute those officials who were found guilty.⁷ Following that several countries introduced the independent governing body of ombudsman in their governance system. But countries like the US, introduced several bills for the establishment of an agency along the working lines of the concept of Ombudsman but somehow it could never be passed so it never became an act and remained a mere concept. The reason that a very renowned jurist, Gellhorn has given is that the members of the Congress in the US feel that establishment of such an agency would only end up in snatching away their powers and the status that they have attained being the officers of the administration and that these officers consider it their sole prerogative to represent their constituencies and handle the grievances of the people.⁸

The Ombudsman in England is officially known as Parliamentary Commissioner and this provision was made under Parliamentary Commissioner Act, 1967. He is appointed by the Crown and having independent status holds the office till the age of 65 years. But the Commissioner cannot entertain a complaint directly from the citizen, it must come through a member of the House of Commons. He does not have any power except the investigation and making the reports. The term mal-administration is not defined in the Statute; it has interpreted the term Ombudsman in a wide sense, as including bias, neglect, delay, incompetence, arbitrariness, turpitude and so on. However, Ombudsman now regards that mal-administration means bad-administration which includes any action or inaction by governmental departments which feels unreasonable, unjust or oppressive.⁹

In Australia also, the Ombudsman system has come into existence. There are two types of Ombudsman system because Australia is a federation. Each State has its own Ombudsman

⁶ Sweden keeps their score above 80 for the last many successive years in the corruption index published by Transparency International (<https://www.transparency.org/en/cpi/2024> accessed on 22/05/2025)

⁷ Claes Eklundh, The Swedish Parliamentary Ombudsman System, Human Rights Commissions and Ombudsman Offices, <https://brill.com/view/title/10812>; https://doi.org/10.1163/9789004481930_029;

⁸ Yash Dhawan and Vidhi Marwaha, Position of Ombudsman in India, International Journal of Law, Management & Humanities, [Vol. 3 Iss 2] <https://www.ijlmh.com/wp-content/uploads/2020/05/Position-of-ombudsman-in-India-2.pdf> (Last Accessed 20th July 2025)

⁹ Anindita Ghatak, India's Ombudsman, The Superhero of Democracy: Role and Proposals for Reform, The Lawway with Lawyers Journal, Vol16 Issue No.16 (Last Accessed 20th July 2025) <https://thelawwaywithlawyers.com/indias-ombudsman-the-superhero-of-democracy-role-and-proposals-for-reform/>

system and there is the Ombudsman system in the Centre. Ombudsman is appointed by the Governor General for seven years and also eligible for reappointment. Here, the Ombudsman has given powers to investigate either on a complaint or suo moto into a 'matter of Administration' taken by the department. As regards the Commonwealth Ombudsman System, it was established by the Ombudsman Act, 1976. The term 'matter of Administration' has not been defined in the Act. Sometimes difficulty arises as to how to distinguish between 'matter of administration' and 'matter of policy'. However, the Ombudsman has noted the Act did not exclude a matter from being 'a matter of administration' on the basis that it might also be 'matter of policy'.¹⁰

2. Different from LSG tribunal, Lok Ayuktha and Lokpal

The Lokpal is the institution that is set-up at the Centre and Lokayuktas are the ones that are established in all the States. The Lokpal is formed as a multi-member institution that is constituted by one chairperson and maximum 8 members. The prerequisite for a person to be the chairperson of this institution is that he should either have been the Chief Justice of India or he must have previously been appointed as a judge in the Supreme Court of India or he must have been "an eminent person with impeccable integrity and outstanding ability", having "special knowledge and expertise of at least 25 years in the issues relating to anti-corruption policy, public administration, observance, finance including insurance and banking, law and management." Half of the members of this institution will be judicial members and at least half of these seats would be reserved for the minorities like SCs, STs or OBC and for women as well. The essential requirement for the individuals to become members of this institution is that they should have either been the Chief Justice of any of the High Courts of India or they should have been a judge in the Supreme Court of India.¹¹

Similarly, LokAyuktas for the States are also constituted. Structure- Composition. The Kerala Lok Ayukta Act, 1999 established the Lok Ayukta for the State of Kerala. The Governor appoints a person who held the office of Judge of Supreme Court or Chief Justice of High Court with the advice tendered by the CM in consultation with the Speaker of the Legislative

¹⁰ Anindita Ghatak, India's Ombudsman, The Superhero of Democracy: Role and Proposals for Reform, The Lawway with Lawyers Journal, Vol16 Issue No.16 (Last Accessed 20th July 2025) <https://thelawwaywithlawyers.com/indias-ombudsman-the-superhero-of-democracy-role-and-proposals-for-reform/>

¹¹ Yash Dhawan and Vidhi Marwaha, Position of Ombudsman in India, International Journal of Law, Management & Humanities, [Vol. 3 Iss 2] <https://www.ijlmh.com/wp-content/uploads/2020/05/Position-of-ombudsman-in-India-2.pdf> (Last Accessed 20th July 2025)

Assembly of the State and Leader of Opposition as the Lok Ayukta. Two other persons shall be appointed as Upa LokAyuktas. They must have held the office of a judge of a HC with the advice of the CM in consultation with the Speaker and Leader of Opposition.¹²

Tribunal for Local Self Government Institutions was instituted in Kerala under the Panchayat Raj Act, and the Municipalities Act. The Act demands for the establishment of the Tribunals in every district or for more than one district, to consider and dispose of the appeal of revision filed against the decisions of the Local Self Government Institutions. The Tribunal shall consist of one judicial officer having the rank of a District Judge, appointed by the Government in consultation with the Chief Justice of the High Court of Kerala and by notification in the Gazette.¹³

3. Powers of ombudsman

The Lokpal or Lokayuktas shall not be considered to be the members of the Parliament or any of the State Legislatures. They are not allowed to be a part of any office of trust or for profit other than the office of Lokpal and Lokayuktas and they can also not be a part of any political party or represent it in its affairs. The offices of Lokpal or Lokayuktas are valid only for a fixed period of 5 years from the date of the commencement of the term. The individuals appointed as Lokpal and Lokayuktas are not eligible to be re-appointed.¹⁴ The Ombudsman shall have powers for investigation or enquiry as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908). It includes (a) summoning and enforcing the attendance of any witness and examining him; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d) requisitioning any public records, or copy thereof from any Court or Office; (e) issuing commissions for the examination of witness; (f) such other powers as are prescribed.

Where the Ombudsman finds that the procedure or practice regarding the administration of Local Self Government Institution gives room for complaint, it may give suggestions to the Government or Local Self Government Institutions relating to the measures for avoiding the recurrence of such complaint. The Ombudsman shall give annually a detailed report regarding

¹² <https://www.lokayuktakerala.gov.in/lok-ayukta-act/#1635228220715-ce961333-4019> (Last Accessed 20th July 2025)

¹³ Panchayat Raj Act 1994

¹⁴ Yash Dhawan and Vidhi Marwaha, Position of Ombudsman in India, International Journal of Law, Management & Humanities, [Vol. 3 Iss 2] <https://www.ijlmh.com/wp-content/uploads/2020/05/Position-of-ombudsman-in-India-2.pdf> (Last Accessed 20th July 2025)

the performance of its functions under this Act to the Government and the Government shall lay it before the Legislative Assembly with an explanatory memorandum. This also makes it unique among comparable institutions in India. Kerala Panchayati Raj Act, 1994 in its 73rd and 74th constitutional amendment gave more power to LSGI. Most of the facilities at state level are provided by the panchayat and state government.

The Ombudsman lacks their own independent investigative staff. They have to take aid from the government for this. One of the legal powers of the Ombudsman is seen, when there is a loss to a citizen LSGI gives an order to compensate the amount from the salary of the responsible person. If the case involves profit by corruption, the Ombudsman may also order penalties in addition to any compensation. The form is currently being updated to make it easier for citizens to understand.¹⁵ For Submitting the Complaint to Ombudsman which requires Fees as Rupees10. The Ombudsman has extensive legal powers. He can order investigations, compel parties to attend a sitting, and issue binding legal orders. Earlier, the seven member panel was abolished, the single Ombudsman has direct control over every stage of the grievance redressal process. He decides which cases are within jurisdiction. He hears evidence and orders investigations and weighs the evidence of those investigations. He decides when and how a case is concluded.¹⁶

Conclusion

For tackling the problem of corruption, the Ombudsman institution should be strengthened both in terms of functional autonomy and availability of manpower. The Ombudsman was created as an idea to the increased power given to local self government institutions (LSGIs) by Kerala.

To prevent the corruption like problem from the very root, the government should address the issues at local governance levels. Introduction of Ombudsmen in all states can reduce the corruption rate and misuse of power. There should be a strong recommendation that the government draft a complete law with harsh penalties for the reduction of cases of corruption.¹⁷

¹⁵ Katha Mathur, OMBUDSMAN - A COMPARATIVE STUDY, IJBARR, Vol.5 issue 3,(Last Accessed 20th July 2025) , <http://admin.ijbarr.com/downloads/161020186.pdf>

¹⁶ Katha Mathur, OMBUDSMAN - A COMPARATIVE STUDY, IJBARR, Vol.5 issue 3,(Last Accessed 20th July 2025) , <http://admin.ijbarr.com/downloads/161020186.pdf>

¹⁷ Anindita Ghatak, India's Ombudsman, The Superhero of Democracy: Role and Proposals for Reform, The Lawway with Lawyers Journal, Vol16 Issue No.16 (Last Accessed 20th July 2025) <https://thelawwaywithlawyers.com/indias-ombudsman-the-superhero-of-democracy-role-and-proposals-for-reform/>