

THE OMBUDSMAN'S ROLE AND IMAGE
IN THE INTERNATIONAL SETTING

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"OMBUDSMAN'S ROLE and IMAGE in the INTERNATIONAL SETTING"

Introduction

This is an age of specialization - Ombudsmen are professional complaint handlers. As such, they deserve the scrutiny of professional ombudsman watchers - so says Professor Stanley Anderson, himself an eminent academic in the Ombudsman world. I go a step further and say that the Ombudsman fraternity must turn the search light on itself from time to time not only to highlight its strong points but also to pinpoint its areas of weaknesses. And in doing so a brief survey of what image people around the world have or have had of us and of our role, could serve a useful purpose as a starting point. Because of the time constraint I would of course necessarily have to be selective. Nor will I attempt to deal with the definition of a classical ombudsman as formulated by the I.B.A.

Official Titles

Some official titles in themselves reflect the ombudsman's role or image, e.g.:

- Parliamentary Commissioner of Administration
- Public Protector (Quebec)
- Le Mediator (France)
- Lok Pal (Public Protector, India)
- Suruhanu (meaning healer, Guam)
- Tanodbayan (Philippines)
- Prividor de Justica (Spain)
- Defensore Civico (Italy).

Non-Official Titles

Let me also recapitulate some of the synonyms and non official descriptive titles that we have been honoured with:

1. grievance man
2. mediator
3. citizen's defender
4. the little man's charter
5. the face of the faceless
6. the voice of the voiceless.

All of these terms point to the relative simplicity of the ombudsman concept, and to use Professor Larry B. Hill's words- "the key to understanding the ombudsman's popularity."

Non-Complimentary Titles

However, there are other unofficial titles not so complimentary but nevertheless worth noting because they reflect public opinion if not on the incumbent himself then on at least some aspects of the institution's weakness-

- a muzzled watchdog
- a paper tiger
- toothless lion
- a crusader without a sword
- a general without an army
- a political eunuch.

It is not surprising that a Report published by JUSTICE in 1977 on the English Parliamentary Commissioner's office is entitled "Our Fettered Ombudsman".

Unintentional Titles

Over the years many unintentional titles or epithets have been heaped on the ombudsman through mis-spelling or mis-pronunciation of the previously little encountered word of the Swedish origin. He has been called-

- o'badman;

- ambassadorman;
- omnibusman; and
- an oddbodman.

I trust the name I was called when I was first appointed ombudsman in 1972 does not reflect the nature of activity I engage in. After hearing of my appointment over the air, my first complainant rang and asked me-

"Are you Mr. Justice Tikaram?"

I said "Yes"

He then asked, "Are you the Ambushman?"

I also trust that not all prisoners who lodge complaints regard an ombudsman in the same vein that the first Ombudsman of N.S.W., Mr. Ken Smithers was addressed in. Before signing his letter the complainant crossed off 'Yours faithfully' and wrote in its place 'You are my obedient servant.'

Picturesque Descriptions

Some writers have drawn some picturesque descriptions of an ombudsman in an endeavour to project his true image. One said -

"He is neither a mythical beast nor a nordic gnome. He is supposed to be a modern answer to what Shakespeare's 'Hamlet' called 'the insolence of office'."

By Professor Hill

I think it was Professor Larry Hill who pointed that the Ombudsman is not as some have supposed -

"A modern Don Quixote with his lance ever poised for tilts at the bureaucratic windmill"

The same conception of the Ombudsman's role or image was expressed by him in different words when he said -

"Nor do they perceive their role as St. George charging about slaying bureaucratic dragons."

In fact according to him a common and unintentional consequence of their investigation is to increase public confidence in the government by showing that many administrative criticisms are unfounded. And yet let us concede that there might be some substance in the allegation by some administrators that sometimes Ombudsman begin an investigation with the exception of discovering some bureaucratic skeletons in the administrative cabinet.

In his book "The Model Ombudsman Institutionalizing New Zealand's Democratic Experience" - Professor Hill likened the ombudsman's office to 'a perpetual reform institution.' He concluded that the Ombudsman has developed into a 'prestigious multipurpose investigative tool - something like a readily available mini Royal Commission.' His final verdict is that the Ombudsman has emerged as a 'national symbol' acceptable to all the parties.

By Professor Wade

Professor H.G.R. Wade, Q.C. of Oxford likened the Ombudsman to a lightning conductor for bona fide grievances. He also observed that the Ombudsman is often pouring oil on some points of friction and is thus capable of diffusing some potentially explosive situations. He welcomes the Ombudsman as an ally of the independent judiciary and the legal profession, who can supplement the rule of law with the rule of administrative good sense and often of generosity.

Spread of Ombudsman Institution

There is little doubt that successive world and regional conferences of the International Commission of Jurists beginning with New Delhi in 1959 have greatly contributed to the spread of the ombudsman idea. The holding of regional conference of ombudsman in Canada, U.S.A., Europe and the Pacific and the two world conferences - first in Alberta in 1976 and the second in Israel in 1980 - have further spear-headed the spread of the concept and focused attention on the institution. And a by-product of this movement is the large volume of literary output in the form of pamphlets, critiques, books, essays, bibliographies and newsletters. Time would not permit me to detail the significant role played by the

International Bar Association and in particular Dr. Bernard Frank whose famous 'Newsletter' and 'Surveys' have now become the responsibility of the International Ombudsman Institute and the Ombudsman Forum. In so far as the English and French speaking world is concerned the Institute is now undoubtedly the main source of communication and literary output.

New International Image

In the matter of promoting national and international goodwill the ombudsman appears to have assumed a new role and has thus added a new dimension to his image. Most regional and international conferences are actively supported by Prime Ministers, Leaders of Opposition and Chief Justices of the host country. When I attended the 2nd International Ombudsman Conference my Prime Minister asked me to convey his good wishes to the Israeli Prime Minister. When Dr. I.E. Nebenzahl of Israel came to Fiji in January 1982 to attend the first Formal Meeting of the International Ombudsman Consultative Committees, he carried with him a letter of felicitations from his Prime Minister to Fiji's Prime Minister.

The Acting Prime Minister of Fiji speaking at a reception he hosted in honour of visiting Consultative Committee members, said

"I do hope that your organization will help us all to advance a little towards the universal goal of making life more meaningful and rewarding for us all."

At the first Australasian and Pacific Ombudsmen Conference held in New Zealand in 1974 the then Prime Minister of N.Z., the Rt. Hon. W.E. Rowling in his welcome address described the ombudsman as a "dispassionate and a compassionate figure standing somewhere between the administration and the individual." He had come to play an important part in evolving democracy," he said. Mr. Herman Doi, the Hawaiian Ombudsman and the first State Ombudsman in the U.S.A., said in his response that the Ombudsman was not a social reformer or a knight in shining armour who challenges and defeats the administrative dragon at every turn. Nor according to him was the Ombudsman a bumbling fool who does little and accomplishes nothing.

Mr. Menacham Begin

In welcoming participants to the 2nd International Ombudsman Conference in Jerusalem in 1980, the Prime Minister of Israel, Mr. Menacham Begin said that the Institution of Ombudsman is one of the finest and most useful in the democratic world. He exhorted the ombudsman to pursue justice with and through justice.

Dr. Bernard Frank

In an address given on the occasion of the opening of the International Ombudsman Institute at Van Leer Foundation, Jerusalem, Israel in 1980, Dr. Bernard Frank said

"If one word can be said to symbolize the true essence of the spirit of the Ombudsman, that word is 'Justice'."

And may I add that the pursuit of justice is the golden thread that binds the ombudsman around the world into one brotherhood whatever their color, religion, race or creed. It must be a matter of some gratification to our fraternity that justice in its most pragmatic form is regarded by the outside world as the principal adornment embellishing the Ombudsman's image.

Reservations and Criticisms

But has the Ombudsman concept always enjoyed universal approval and unstinted support? And is the Ombudsman himself always accepted unreservedly as an infallible paragon of virtue or as a panacea for all ills? I think not and rightly so. We are all aware of some of the criticisms made of the institution itself, namely -

1. it seems to duplicate some of the work of the judiciary;
2. it creates a new species of bureaucracy;
3. it makes a civil servant over cautious;
4. it encourages a society of grumblers and critics;
5. the ombudsman himself is not accountable to

Opposition to Ombudsman Institution

It is also worth remembering that the enactment of Ombudsman legislation in a number of countries has not always enjoyed easy passage.

Denmark

The Swedish Ombudsman has had a long and honourable history since 1809 but it received very little attention beyond Sweden. It has not until almost one hundred and fifty years later, when Denmark established the office, that people beyond Scandinavia became aware of and interested in the institution.

The Danes took almost ten years to establish their ombudsman. The Constitutional Commission of 1946, in a report in 1953, recommended the introduction of a system based on the Swedish Justitieombudsmand. The 1953 Danish constitution provided for Parliament to appoint one or two people to supervise the civil and military administrations. Parliament passed the enabling legislation in 1954, and the supervisory powers were vested in a single person. The office formally began activity in 1955.

U.K.

In the U.K. one of the fears was that the ombudsman institution would undermine the concept of ministerial responsibility. In spite of the report of the JUSTICE recommending the setting of the office of the Parliamentary Commissioner for Administration, the Government of the day decided not to proceed with the matter. In November 1962 Lord Dilhorne, the Lord Chancellor, made this statement in the House of Lords-

"The Government believe that any substantial extension of the system of reference to tribunals would lead to inflexibility and delay in administration and that the appointment of a Parliamentary Commissioner would seriously interfere with the prompt and efficient discharge of public business. In the Government's view there is already adequate provision under our constitutional and parliamentary practice for the redress of any genuine complaint of maladministration in particular by means of

the citizen's right of access to Members of Parliament."

In 1964 Labour Government came into power and the following year the new Government produced a White Paper indicating that they had decided to introduce legislation for the appointment of a Parliamentary Commissioner for Administration. The Bill was introduced in 1967 and it came on to the Statute Book as Parliamentary Commissioner Act, 1967, some nine years after JUSTICE started its campaign.

New Zealand

There is no doubt that the establishment of the N.Z. Ombudsman Office in 1962 and its success created a vogue in the English speaking world that has not lost its momentum even twenty years later. But it is worth remembering that the office was created by the National Government over the desultory indifference of the Labour and the outright hostility of the Public Servants Association. The original Parliamentary Commissioner's Bill of 1961 was subjected to so much adverse criticism that it was withdrawn, drastically revised and reintroduced in 1962. As I understand it, like the United Kingdom, much concern was also felt in certain political quarters in N.Z. that the Ombudsman institution might undermine the concept of Ministerial responsibility. Some years ago Dr. Kent M. Weeks carried out a study in N.Z. He concluded that the Ombudsman had neither pre-empted the traditional role of the M.P nor had he hindered parliamentary supervision.

India

India still has not got a federal ombudsman (Lok Pal) although attempts have been going on since 1966. In that year the Administrative Reforms Commission under the chairmanship of Shri Morarji Desai (later to become Prime Minister of India) recommended (inter alia) the creation of the office Lok Pal in an Interim Report entitled - 'Problems of Redress of Citizens' Grievances'.

There are more competent persons than myself present here to comment on why India still has not got a Lok Pal at the federal level.

Malaysia

I am sure it will interest all of you to know that one of the reasons why Malaysia has not got around to enacting ombudsman legislation is that they do not think that they have a single person who alone would embody all the qualities required of an Ombudsman in the Malaysian setting. I can assure you that I got this view point from the highest authority. Whilst the failure to establish the ombudsman office in Malaysia is a setback to the spread of the Ombudsman Institution the image of the ombudsman has taken an extra shine.

South Africa

It is a healthy sign that the Association of Law Societies of the Republic of South Africa has shown interest in the Ombudsman's concept. But the International Ombudsman Institute and the Ombudsman's Forum which joined hands with the African body to hold a seminar in Cape Town in March this year came in for a lot of solid criticism from various quarters. The Chief Ombudsman of New Zealand, Mr. George Laking, who declined to attend and who discounted concern with political implications said -

"It is simply that I doubt that in the face of a seriously divided public opinion, any Ombudsman could hope to retain his credibility with the public if he were to attend a seminar in a country whose constitution enshrines the kind of discrimination which the Ombudsman principle is designed to eliminate"

Sir Guy Powles who is a Commissioner of International Commission of Jurists and was the former Chief Ombudsman of N.Z. also opposed the seminar. In his view the ombudsman concept could not co-exist within the framework of Apartheid and the seminar could not "other than harm the international standing of the institution of ombudsman." But some say there can be no progress without contact and dialogue.

The question is - to what extent, if any, the image and the credibility of the Ombudsman institution has been harmed or enhanced by holding the seminar in South Africa, especially in so far as the 3rd world countries are concerned? In this regard excerpts from a report on the Seminar, prepared by Mr. Alex Weir, Chairman of I.B.A. Ombudsman Forum, and published in the April 1982 issue "I.O.I. Newsletter" should also be looked at.

Quasi Ombudsman

The growing number of grievance-handlers especially in universities and supermarkets in U.S.A. who style themselves as Ombudsman is a matter of some concern because these quasi ombudsmen lack the true and the desired characteristics of the Scandinavian or classical model. One writer has said they are attempted clones who do not reproduce the original very well, and thus they do not adequately serve either the concept of the Ombudsman or the people they are somehow, to 'defend'. But it seems that there is very little we can do at an international level about this type of proliferation.

The Honourable Peter Lougheed on the Ombudsman's Role

As you all know the 1st International Conference was held in Alberta, Canada in 1976. At a dinner hosted by the Provisional Government, the Premier, the Hon. Mr. Peter Lougheed, while confirming his Government's high esteem and support for the Institution - took time to remind participants that -

1. Nobody is perfect - even all of you fine gentleman.
2. The Ombudsman has no role with regard to the Judiciary and it should remain so.
3. In our system the elected Ministers establish the policy, the public service administers the policy. I don't think the role of the Ombudsman should be extended. (He suggested that the natural pressure from the public to use the high esteem of the office to delve into fairness of policy matters should be resisted.)
4. The Ombudsman has got to be very human - its got to be an office of compassion. The citizen needs your time to help him individually and not impersonally. (He was clearly suggesting that we ought not to get involved with issues and citizens at large to the

detriment of individual attention).

Prof. Gelhorne on Limitations

Professor Walter Gelhorne has said that one of the greatest injustices to the Ombudsman would be to regard him as a possessor of the cure-all. In his opinion "... Ombudsman no matter how accomplished they may be, cannot replace all other mechanisms that make for governmental justice and wisdom. They must be viewed as supplementors of and not as substitutes for legal controls."

Hon. J.V.H. Milvain on Fallibility

On the question of the fallibility of the Ombudsman and his role, the famous words of the Hon. J.V.H. Milvain, Alberta's Chief Justice of the Trial Division, bear repetition - "It must of course be remembered that the Ombudsman is also a fallible human being, and not necessarily right. He however, can bring the lamp scrutiny to otherwise dark place, even over the resistance of those who would draw the blinds."

Sir Ronald Davison on Judicial Review

Are we some times lulled into a sense of complacency because our decisions are not reviewable other than on grounds of jurisdiction? There are some who think that the Ombudsman's decisions should be reviewable by a court of law under certain circumstances. One such person is none other than Sir Ronald Davison, the distinguished Chief Justice of N.Z. Delivering an address entitled - "The Courts and the Ombudsman : Protectors against Maladministration " at the 5th Australasian and Pacific Ombudsman's Conference held in N.Z. in 1981, the learned Chief Justice said -

"For myself, I am of the view that in a country governed by the Rule of Law, there should be no person or body which is either above the law or outside the law. All should be subject to the control of the Courts."

This viewpoint ruffled many Ombudsman feathers.

Conclusion

So long as we are mindful that in our endeavours to seek redress for grievances we are there neither to witch-hunt nor to white-wash,

so long as we recognize our built-in limitations, that we cannot remake society and that whilst we can through fostering administrative reforms, help to make good government better, we cannot make bad government good,

so long as we believe in ourselves and at the same time remind ourselves that we are also fallible human beings,

so long as we remember that our qualities and capabilities are the central ingredient in the efficacy of the Ombudsman institution but bearing in mind at all times Prof. Gelhorne's words that no mystical light shines on every move of ours,

so long as we continue to recognize and emphasize our greater regard for individual justice of a case than is generally possible by the ordinary legal process of the courts,

so long as we retain our political neutrality and act impartially, independently and fearlessly but without rancour,

so long as we refrain from accepting additional assignments or posts which may lead to conflict of interests,

so long as we take care to explain governmental decisions where necessary and at the same time not overlook to give reasons for our decisions and recommendations,

so long as we ourselves remain human and accessible in an age of rapid technological advance where the society itself is becoming increasingly impersonal, and where the comforting hand of the humanizing agent is warmly welcome,

and so long as we, to use the words of Socrates - hear cautiously, answer wisely, consider solidly and decide impartially,

then in my humble view the Ombudsman image will continue to grow and shine in the

international sphere, not only in the 80's but also for years ahead.