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Judicial Review of Insurance Ombudsman Decisions: A Legal Perspective

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Abstract - In this research, we set out to comprehend the ombudsman idea and find the problems with its implementation by conducting a thorough examination of its history, development, and operation in various regions of the globe. In light of the foregoing and in light of international precedents for ombudsman schemes, the following recommendations are put forth: (i) the establishment of a unified regulatory body overseeing all state lokayukts to standardize their respective jurisdictions and the means by which complaints are addressed; (ii) the transmission of technical circulars from insurance companies to the Ombudsman's office; and (iii) the regular updating of annual reports on complaints filed and resolved in the online platforms of electricity ombudsman, Lokpal, and other ombudsman; and (iii) the modification of appeal provisions in other types of ombudsman, similar to that of the Banking Ombudsman. A step forward towards good governance may be achieved by using extracts from this research to elevate the position of ombudsman among the Indian populace, since it offers a comprehensive and well-organized review of all the many facets of the position.

Keywords: Ombudsman Decisions, Insurance, Judicial, population, governance, Banking

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INTRODUCTION

The term "ombudsman" has been in use for almost 300 years; it originated in the 1809 institution of the "Swedish justitie ombudsman," or "ombudsman for justice" (Rief 2000). The Swedish king was defeated by the Russian forces in 1709 and fled for a few years. In 1713, he assigned a delegate to maintain law and order in his government. In 17192, the monarch appointed that individual to the position of "Justitie kanslern," literally "Chancellor of Justice" (Gellhorn, 1965; Reif, 2004)[1]. If any government official was found to be violating the law or engaging in other forms of wrongdoing, the Chancellor of Justice had the authority to take legal action against them. From 1766 until the king's return in 1772, the responsibility of choosing the Chancellor of Justice was shifted to the estates (parliament) (Reif, 2004)[2].

A new constitution was enacted when the monarch abdicated in 1809. Separation of monarchy and legislative authority was a key feature of this constitution. As a result, parliament was granted the authority to exert certain checks and balances on the choices and acts of the executive branch (Reif, 2004). A new position, the "justitie ombudsman," was established in the 1809 Swedish constitution.

In addition, as will be covered in later chapters of this study, the chancellor of justice's responsibilities shifted from just overseeing legislation to a process driven by public complaints (Reif, 2004).

That "the memorandum of the Constitutional Committee indicated that its members felt that an ombudsman appointed by the legislature would promote genuine civic feeling and that the ombudsman was intended primarily to establish a system of supervising the discharge of public office which was independent of the Government" was the rationale, according to Wieslander (1994)[3], order for the Swedish parliament to create the new position of legislative ombudsman. He went on to say that the legislature believed the Chancellor of Justice's oversight of administration was inadequate to safeguard public rights because the Chancellor was only accountable to the executive branch, citing

[1] Gellhorn, Walter. 'The Swedish Justitieombudsman' (1965), The Yale Law Journal, 75:1.
[2] Reif, Linda C. 'The ombudsman, good governance, and the international human rights system' (2004), Martinus Nijhoff Publishers, Leiden/Boston

[3] Wieslander, B., 'The parliamentary ombudsman in Sweden'(Bank of Sweden Tercentenary Foundation, 1994) .

"debates of the Estate over constitutional proposals of the committee."

There were four parliamentary ombudsmen in Sweden, including a chief ombudsman, and the country was supposedly ruled by the 1974 constitution until the year 2000 (Reif, 2004). The ombudsman was also known as the "human rights ombudsman" because of his or her role in monitoring the Swedish government's adherence to human rights provisions in the constitution.

Even while ombudsman positions were first suggested in the 17th and 18th centuries, they didn't start to acquire popularity in other parts of the world until the early 20th century. After gaining their independence in 1919, Finland included the role of ombudsman in their constitution. Other Scandinavian nations, such as Denmark and Norway, followed suit in 1955 and 1962, respectively, including the idea of a public sector ombudsman (Modeen, 1981; Reif, 2004)[4].

In 1962, the public sector ombudsman was first introduced in New Zealand, the first commonwealth nation, although the practice only gained traction after 1960. Traditional or hybrid ombudsman systems were later established by other commonwealth nations in the Americas, Asia, Africa, and the Pacific.

DEFINITION OF JUDICIAL REVIEW

Judicial review refers to the authority of a country's courts to investigate and rule on the constitutionality of acts taken by the legislative, executive, and administrative branches of government. An action is deemed null and invalid if it is determined to be inconsistent with the Constitution. In this sense, a written constitution is necessary for the institution of judicial review to exist.

Through judicial review, the legislative, executive, and administrative acts of a government may be examined by the highest court in the land. When a government activity conflicts with a higher authority, the court may invalidate the legislation, act, or government action via judicial review. It is possible, for instance, to strike down a legislation for being in conflict with the provisions of a constitution or an executive order for being illegal. As a safeguard against the abuse of power by the executive or legislative branches, the separation of powers includes judicial review, which gives the court the right to oversee (judicial supervision). Jurisdictions use different theories, which means that court review processes and scopes might vary both internationally and domestically.

"Constitutional review" more adequately describes the common understanding of the term judicial review, as administrative agency activities have been subject to judicial scrutiny for quite some time, which predates the need for a codified constitution and gives courts the authority to find such actions unlawful. By comparing purportedly dubious administrative acts to criteria for rationality and misuse of authority, this "administrative review" finds the administrators in question. Courts that engage in either traditional or constitutional judicial review strike down challenged administrative actions that they deem irrational, characterized by an excess of discretion or a failure to comply with constitutional mandates.

LEGAL PRINCIPLES GOVERNING JUDICIAL REVIEW

Judicial review of administrative powers, under common law, refers to the process by which the regular courts, which also handle disputes between private parties, examine the use of such authorities. However, regular German courts do not have the authority to hear cases involving administrative law, as will be explained later on. These cases are expressly within the purview of the administrative courts, which were established with that express purpose in mind.

Thus, in Germany, judicial review of administrative powers include reviewing the administrative courts' use of such powers. Be that as it may, administrative tribunals that exercise common law jurisdiction are distinct from administrative courts. In Germany, administrative courts are an essential component of the judiciary and share the state's judicial authority with other courts, in contrast to administrative tribunals, which are still seen as an arm of the executive branch despite their statutory status and independence. They have the same degree of autonomy from the executive branch as regular courts.

Differences in the use of judicial review originate from the two systems' fundamentally different approaches. To begin, the common-law courts' judicial review jurisdiction stems primarily from its long-established mandate to provide victims of wrongdoing by private citizens or public servants with redress. There is no need for legislation to bestow this authority on the courts; it is intrinsic to the system. It is important to note that administrative courts in Germany do not possess this inherent authority. Their authority is based on the laws that govern their domain. Although the courts do not have the inherent ability to fix every administrative wrong, the Basic Law does recognize the right to seek redress in the event that a person's rights are infringed by any public authority.

Additionally, although the common-law courts' authority to oversee the execution of administrative functions is not reliant on the grant from lawmakers, it may undoubtedly be curbed by legislation. This is really the result of the establishment of administrative tribunals that are empowered to rule on subjects pertaining to their purview based on both factual and legal considerations. So far, the courts' authority has been limited to deciding jurisdictional

[4] Modeen, T. 'The Finnish Ombudsman: The first case of foreign reception of the Swedish Justitieombudsman Office' (1981). The Ombudsman Journal, 1: 41-52.

issues alone. That is the principle, at least; in reality, however, courts often go into the merits arena to settle jurisdictional disputes. This limitation does not, however, apply to Germany's administrative courts. They may determine on the merits of the case based on their plenary jurisdiction, which allows them to investigate and rule on both legal and factual issues.

Finally, thirdly, by extension of the previous argument, the common-law courts may only validate or invalidate an executive branch action. Neither can they change it nor fix it. However, the German administrative courts have the power to confirm mistakes made within their authority, alter or replace the administrative decision, and even nullify an administrative action if it exceeds their jurisdiction. The reasonableness or practicality of an administrative decision is likewise beyond their purview. Their authority, however, extends beyond matters of jurisdiction. In addition to replacing the administrative decision with their own, they may investigate any and all concerns of legality, regardless of how obvious or concealed they may be in the record.

Finally, unlike in common law, German law does not differentiate between ordinary and extra-ordinary remedies for judicial review of administrative conduct. German courts often scrutinize all administrative activities or judgments via suit processes.

There is a shared goal and methodology between the two systems, despite their outwardly different approaches. Finding a happy medium between safeguarding private interests and efficiently managing and accomplishing public goals is the holy grail of both systems. They are both dedicated to maintaining order and making sure social assistance is administered efficiently. To that end, both systems have used the same kind of judicial procedure, which has allowed them to build a corpus of law that governs administrative policy and the judicial review of executive branch actions. Aside from a few inconsistencies, the two systems' bodies of law are quite similar.

ROLE OF INSURANCE OMBUDSMEN IN DISPUTE RESOLUTION

With the goal of expediting the transmission of complaints from protected consumers and alleviating their problems associated with their resolution, A government notification dated 11 November, 1998 formed the Insurance Ombudsman. It is quite essential to have this basis in place so that arrangement holders may be certain in their investments and have faith in the system. Policyholders and insurers alike have benefited from the foundation's ability to foster and sustain trust and assurance.

The Insurance Ombudsman is a neutral third party that hears complaints against insurance companies and decides how to proceed. The following situations may necessitate a formal grievance procedure with the insurance provider:

(a) The insurance company's denial of coverage, in whole or in part, or (b) A dispute over the amount of premiums paid or due under the policy (c) In the case of a claim-related dispute, any disagreement about the correct construction of the language (d) The payment of claims is postponed and (e) No insurance document, such as a policy, is issued notwithstanding the receipt of premium.

The insurance ombudsman may only handle cases involving policies with a total value of up to twenty million rupees. Within three months of an Insurance Ombudsman's decision, the insurance companies are required to honor the compensation.

JUDICIARY APPROACH IN INDIA

Instead of asking about the administrative action's merits, the Indian court focuses on the procedure. Because going above and above in the sake of avoiding abuse of authority might lead to the court's guilt, the court has a supervisory responsibility. The authority of the judiciary is severely constrained. Their authority to make decisions is already severely limited, and this method is really a means to an end—the transfer of cases to the courts.

Courts cannot rule on the merits of the case because judges lack the jurisdiction to tell administrative authorities how to make decisions. Separation of powers is a living, breathing doctrine that is actively upheld. The authority to determine whether a certain use of power is constitutional rests with the courts. Policy issues are outside the judge's purview to determine. A decision-making process, as opposed to an administrative authority judgment, is at the heart of the judicial method. To ensure that the administration is keeping its distance, the court must uphold the "Rule of Law" premise. Here are a few of the most important rulings in this area.

Common Cause v. Union of India (2018): Here, India's highest court ruled that the 2013 Lokpal and Lokayukta Act was constitutional. The court approved the appointment procedure of Lokpal and Lokayukta members and deemed the measure a major milestone in the battle against corruption.

Madras High Court Life Insurance Corporation of India vs The Insurance Ombudsman on 29 April, 2024

This writ petition (W.P.No.1530 of 2022) seeks to order the Life Insurance Corporation of India to pay back the premiums it received from the petitioner plus interest at the rate set out in Rule No.17(7) of the Insurance Ombudsman Rules, 2017, beginning on the date the premium was received, in accordance with the award passed by the Insurance Ombudsman in an order dated 30.07. 2021.

An ruling dated 22.03.2017 given in W.P.No.2299 (W) of 2016 from the High Court of Calcutta in the matter of Life Insurance Corporation of India Vs. The Insurance Ombudsman established that an insurance company needs a cause of action before it

may approach a writ court. If the Insurance Company's rights are infringed upon, a legal action may be taken. No right of the insurance company may be considered as violated by an award made by an insurance ombudsman. https://www.mhc.tn.gov.in/judis W.P.No.140 of 2022 etc. Consequently, individuals are unable to seek redress via a writ court as an individual or entity dissatisfied with the Insurance Ombudsman's decision. The insurance companies themselves choose the insurance ombudsman. According to the regulations, the Insurance Ombudsman is responsible for resolving insurance-related complaints from the most senior policyholder. Thus, the Ombudsman's award cannot be challenged via the Writ Petition.

Gauhati High Court WP(C)/1889/2014 on 6 February, 2024

The petitioner's complaint revolves on the fact that on October 14, 2006, a group of people in Guwahati rented a car from a driver in order to go to Nagaon. The petitioner claims that after Md. Alam Hussain informed him that he was hiring passengers to go to Nagaon, the petitioner's hired driver set off for Nagaon. The ruling in Sadhana Lodh [above] was made within the framework of a narrowly tailored statutory appeal right that the insurer had under the Motor Vehicles Act, 1988 (Section 173 r/w Section 149).

There is no such problem at play here. It has been noted in Asha Goel [supra] that the High Court cannot be bound to accept a writ petition under Article 226 of the Constitution to enforce a claim under a life insurance policy under any circumstances. The current petitioner and the respondent-insurer engaged into an insurance contract, which is similar to a life insurance policy. As a general rule, courts will not hear writ petitions seeking to enforce rights and duties that are based only on contracts and that raise factual disputes.

It has long been established that a writ process under Article 226 of the Constitution is not the proper course of action when resolving the issue at hand requires investigation into facts that may need recording oral testimony. In light of the above, an examination of the facts of the present case is required to determine whether the present writ petition warrants consideration.[5]

Karnataka High Court Writ Petition Nos. 14778 of 2013 & 14779-14781 of 2013 - N Kushalraj vs The Banking Ombudsman on 14 March, 2019,

The petitioners challenged the legitimacy of the ruling made by the Banking Ombudsman, Bengaluru on January 15, 2013, which denied their application based on Clause 13(c) of the Banking Ombudsman Scheme 2006, according to the case report. In a nutshell, the petitioners applied for a loan from respondent No.2—the bank—and that is what prompted the writ petitions. The petitioners claim that respondent no. 2 has profited from the sum of Rs.32,40,428/-, which includes the principal, interest, and compounding. As a result, the petitioners took their case to the Banking Ombudsman in Bengaluru, who ultimately decided against hearing it.[6]

Based on the petitioners' allegations, the court found that the Banking Ombudsman Scheme of 2006 does not allow the consideration of extensive oral and documentary evidence. The petitioners' suit has so been appropriately dismissed.

Banking Ombudsman, Bengaluru's ruling is free from any jurisdictional mistake or defect that would need this Court's intervention in the exercise of powers under Article 226 of the Indian Constitution. As a consequence, the petitions are dismissed, and the petitioners are free to seek whatever legal response they see fit.

INSURANCE OMBUDSMAN FUNCTIONALITY

To fully appreciate the assistance they provide, it is necessary to comprehend the function of the Insurance Ombudsman[7]:

1. Easy Access to Justice: Anyone may use the Ombudsman since it is a low-cost and easily accessible service. Since there are no costs associated, many policyholders are able to contact out without any reservations.

2. Impartial Resolution: Independence and impartiality are hallmarks of the Ombudsman's work. This guarantees that the disagreement is handled properly and that rulings are based only on the case's merits.

3. Efficient Process: Cases handled by the Insurance Ombudsman are guaranteed to be resolved within a set time frame, usually three months, in contrast to court issues. Resolving insurance claims quickly and efficiently is essential for reducing the anxiety and worry that comes with them.

4. Expertise in Insurance: When it comes to insurance, the Ombudsman is an expert. Their extensive expertise guarantees impartial decision-making.

LEGISLATION GOVERNING OMBUDSMAN

In India, the Lokpal and Lokayuktas were established after studying the effectiveness of Ombudsman duties in other nations. At the national level, the Lokpal acts as the Ombudsman of India,

[5] Available from: http://www.irda.gov.in/ADMINCMS/cms/LayoutPages_Print.aspx?page=PageNo233

[6] Baradhwaj C. L., IRDA Journal 9(11) (2011) 14-19.

[7] Gaba, Ravi & Angrish, Kumar & Agarwal, Angrish. (2023). Effectiveness of IRDAI (Insurance Regulatory and Development Authority of India) Regulations on Grievance Redressal of Life Insurance Consumers in India. 2454-9150. 10.35291/2454-9150.2019.0363

while at the state level, the Lokayuktas do the same[8].

M.C. Setalvad first advocated the notion of establishing an Ombudsman in India during the 1962 All-India Lawyers' Conference.

In 1968, a proposal was made to the government by the Administrative Reforms Committee to create an Ombudsman. But a law was not filed for this purpose until 1971, and it never passed.

The Lokpal Act of 2013 created the position of national anti-corruption ombudsman in India. To fight corruption in India, it is responsible for investigating allegations against public personnel as outlined by the Lokpal Act.

JUDICIAL REVIEW MECHANISMS

The ombud as a case study

In public law litigation, the ombud office's approach to the court and what this informs us about the relationship between the two is a key subject of this research. Some have called the ombud a "constitutional misfit" because of its unusual place in the legal system and the lack of clarity around its connection to the courts. The majority of ombudsmen believe that the law says very little about this connection[9].

No one definition of an ombud exists, but generally speaking, it is responsible for investigating allegations of unfair treatment, poor service, or maladministration by individuals or organizations that fall within the ombud's purview. Judicial review mainly targets this role of processing complaints. Ombud services are separate from the several public entities that provide complaint handling services. Judgment on complaints is reviewed by the courts only on legal grounds; this office acts independently of day-to-day political influence. In 1967, the Parliamentary Commissioner for Administration was the first ombud to be established in the United Kingdom. While the ombud's precise influence is debatable, its introduction to the United Kingdom marked a daring new direction in administrative justice at a period of generalized rebalancing of power between the administrative state and its citizens. At least seventeen distinct legislative schemes presently carry out ombudsman-like tasks, with a number of others having the ability to be reviewed by the courts.

A statutory appeal procedure is established for the Scottish Legal Complaints Commissioner (SLCC), which is similar to judicial review, and for the Pensions Ombudsman, which is similar to the Pensions Ombudsman, a statutory appeal mechanism is given. However, in both cases, the appeals courts look at the law rather than the facts. If complainants are dissatisfied with an ombud's judgment, the only legal recourse they have is judicial review, which does not apply to any other programs. This research has found 109 public law challenges against ombuds judgments as of December 2019, with the first court appeal against an ombuds decision hearing place in 1978. This casebook's acceptance for public law pre-proofreading in February 2020 affects ninety-three cases.

There seems to be a link between the growth of the industry and the rise of users seeking court review; since that period, there have been five completely heard cases year on average, with a comparable number of permission hearings.

THE OMBUDSMAN AND GENERAL PRINCIPLES OF ADMINISTRATIVE LAW

The primary motivation for this research is a need to document in a systematic way the process by which courts evaluate ombud rulings. The scholarly community's assessment of the ombudsman's role in the judicial system veers dangerously close to declaring a legitimacy crisis. Such claims may only be entertained if there is a firm foundation of evidence about the actual application of ombud administrative law.

In seeking this data basis, we put out a hypothesis: that while creating case law, the courts would probably take the sector's expectations into account, bearing in mind the ombud's distinct features as an autonomous actor in the accountability framework. Because of their broad discretion in judicial review and the common law tradition's recognition of administrative law doctrine rules as malleable boundaries that may be implemented more or less strictly according to the circumstances and the judge, this "institutional entrepreneurship" is possible. Although this theory can only be tested with the dataset given here, it is very probable that similar dynamics exist in other areas of administrative law.

Administrative law perspectives that are dubious of the discipline's presentation as "a cluster of legal structures which apply generally across all areas of public administration" might be strengthened by this evidence, if a novel method for interpreting ombud case law is discovered. The generalist method is most often linked with the idea of presenting administrative law principles as a uniform taxonomy of legal reasons. The appealing nature of this method as a guide for the court's work stems from at least two normative considerations: first, the need to ensure that decisions are predictable and clear, and second, the necessity to hold the judiciary up to its decisions.

The public law pre-proofreading copy was accepted in February 2020. Rescheduled for release in the fall of 2020.

[8] Kirkham, Richard. (2018). Judicial review, litigation effects and the ombudsman. Journal of Social Welfare and Family Law. 40. 110-125. 10.1080/09649069.2017.1415244

[9] Gupta, Ekta & Bikram, Kirti & Shrivastava, Gitanjali. (2022). Insurance dispute settlement mechanism in India: A critical analysis. International journal of health sciences. 10.53730/ijhs. v6nS6.11463.

There has been much debate about whether or not the generalist administrative law approach is empirically accurate. The judiciary's inability to establish or adequately follow a uniform model of public law's formal legal theory is a source of worry for some. Some people think that judges nowadays put too much weight on the specifics of each case while making decisions. Some have said that the reasons given in typical administrative law textbooks do not always line up with the way judges actually make decisions while hearing cases. This creates a conflict between administrative law theory and reality. While the second conclusion does not prove that administrative law principles in general do not exist or are incorrect, it does imply that a narrower view fails to adequately describe the process by which judges reach their decisions. This discovery may also indicate that administrative law contains an inherent customization component that has been under-emphasized in the majority of analyses.

In other words, the normative assumptions imposed by common law design should not be allowed to force flexibility out of administrative law; there may be valid reasons for this. Customizing administrative law is not an excuse for ambiguity; rather, Here we see the common law in action, with its guiding principles consistently applied to a specific context. Various legislative systems are susceptible to judicial examination, and it would be impractical to create a single set of applicable doctrine to describe all public law. This, in turn, causes judicial decision-making to vary.

CONCLUSION

To further the role of the Ombudsman in India and help strengthen democratic processes, the country should establish its own centralized association similar to the American Ombudsman Institute. In such instances, the High Court has brought attention to the difficulties that the ombudsman encounters. They have to depend on other reports as they do not have their own investigative agency, which means that in some situations the findings are incorrect. Additionally, the ruling was overturned in a few instances. The court's ruling has also brought attention to the need for every state to select a Lokayukta. The Ombudsman institution will also be the subject of scholarly research. The Lokpal and Lokayukta Act, which controls the appointment process, does not provide any criterion for determining distinguished jurists. Furthermore, the Centre for Lokpal has not yet appointed a Director of Inquiry, the person who should be responsible for initiating investigations into allegations of wrongdoing by anti-corruption ombudsmen. Initial investigation of around forty-one instances is still ongoing, according to sources.

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