

## Outline

### **Ombudsman and Independence**

The scope of the present study can be outlined with reference to the issue of independence of Ombudsman in the context of Asia. I propose to look into a select number of countries to highlight the challenges and pressures faced by this ultimate arbiter of conflicts, which is relatively new and somewhat secondary to the supreme power structure in various countries.

Selection of countries can be on the basis of either regional representation within Asia, or forms of government – democratic or otherwise – or success or failure of Ombudsman in terms of public profile. Perhaps, in a final sense, this selection can be sensitive to all of these criteria. In chronological terms, I shall aim at studying the characteristics and conditions of independence of Ombudsman during the past decade and beyond. Also, I shall focus on two issues: one, operational independence of Ombudsman in the context of the process of governance in and around the complaint handling mechanism and accountability of public officials; two, structural independence by way of legal and institutional framework covering the budget, recruitment and career pattern of staff, and dynamics of institutional support provided by the state including the courts, tribunals and investigations agencies.

Some of the major themes to be covered in this study include the following:

- i. I plan to draw a comparison between the structure and function of Ombudsman in selected countries. This would lend meaning to the concept and practice of independence of this office in terms of peer-to-peer exchange of wisdom as well as learning from best practices.
- ii. The issue of independence will be contextualised in the overall framework of the role of Ombudsman, bringing in such issues as flexibility, credibility and accessibility. Further, I shall analyse the effectiveness and public accountability as constituting the barometer for judging the quantum and nature of independence of Ombudsman.
- iii. While dealing with the core issue of this study, i.e. independence, I shall dwell on procedural issues such as: appointment of staff, budget control, reporting to the appointing authority, conflict of interest, non-partisanship and non-vulnerability to pressure from interest groups, official machinery and media. Also, as an agency of last resort to provide redress of public grievances, Ombudsman's need for autonomy

from parallel channels of seeking justice such as courts and tribunals would be dealt with in the comparative context.

- iv. The structural issues are at the core of any analysis of the operations of Asian Ombudsman. The question to be addressed is: how to belong to a structural matrix such as a government and still be independent of it. This will require analysis of the issues of legal and moral legitimacy, the role of civil society as well as response of the citizen, as part of the litigant public, to the opportunity framework of Ombudsman. Most of all, this relates to constitutional provisions ensuring the operational dynamics of this office, whereby rights-bearing individuals can seek redress of their grievance with reference to a tangible, well-defined and stable regime of law and law-enforcement agencies.
- v. I also plan to look into actual or proposed reforms at the macro-level, such as civil service reforms, consolidation of democracy through strengthening of parliament, reinvigoration of the rule of law, and public outcry against corruption and inefficiency of the system leading to radical reforms. Among other macro-level currents of opinion or patterns of authority, I can focus on areas such as religion, especially the emerging dichotomies between the legal-institutional approach to governance and supra-legal sacred codes of individual morality and public ethos. Similarly, the concept of 'Asian values' and other contenders for legitimacy in the domain of development and citizen orientations need to be discussed and analysed.
- vi. Independence of the institution of Ombudsman will not carry much weight if the public does not have full knowledge about the institutional potential of this office to deliver on redressal of grievances. That entails the issue of communication as well as public imagination about the role of Ombudsman. Improvement in service delivery is directly related to advocacy and outreach of this office in various contexts: communication with stakeholders, opening up the institution to the general public, bringing in third party perspectives, and policy dialogues with the government, donor agencies, intelligentsia and comparable institutional frameworks in Asia and the larger world.
- vii. The current dependence of the grievance-ridden citizenry on legislators for performing the function of brokerage between the state and itself is uncertain, tedious and contingent upon the smooth functioning of relations between the executive and parliament as well as between the government and opposition. I shall look into the capacity and promise of Ombudsman to take over this function directly, which is

called the Ombudsman role of parliamentarians in political literature. This would require a study of the brokerage function of parliamentary democracy such as in India and Pakistan, or party platforms such as in China, and see how far an independent Ombudsman can be a more effective and predictable channel for delivering the public from the morass of administrative inefficiency and corruption.

- viii. I would like to bring out the requirement for independence of Ombudsman as a structural variable in the overall framework of state authority in the context of actual record of service delivery, beyond a mere normative perspective. That would bring in the accountability aspect into the open with reference to the actual cases of interference from outside and the way Ombudsman was able to face this challenge. I shall then try to develop a conceptual framework on the basis of input from the experiences of Asian countries to provide a ‘grounded theory’.

Methodologically, I shall approach the subject in three broad ways: a) Review of existing literature on Ombudsman and various aspects of its role in countries ranging from USA, Canada and France to India, China and Pakistan. This literature includes scholarly studies, surveys and reports about the functioning of Ombudsman in various countries, especially those from Asia; b) Visits to the secretariat of the Asian Ombudsman Association in Islamabad and the offices of Wafaqi Mohtasib (Federal Ombudsman) of Pakistan. I shall be able to get the published and unpublished material such as annual reports from the two organisations and such subsidiary organisations as provincial Ombudsman; e) In-depth interviews of government officials, NGOs, Ombudsman and the office staff and various stakeholders. In this way, I hope to judge success against failures, ends against means the functioning of public Ombudsman against other Ombudsman, such as parliamentary or corporate Ombudsman.

The main focus of the present research will be on monitoring the situation on the ground in both institutional and operational terms, i.e. in terms of both input and output. The study aims at understanding the role of Ombudsman in terms of its jurisdictional autonomy and freedom from interference as well as lessons from the best practices.