

Ombudsman: A Regulator to Regulate the Regulator

“Corruption is like a ball of snow, once it’s set a rolling it must increase.”

- Charles Caleb Colton



An ombudsman is someone who investigates complaints made by people against the government or any public organisation. An Ombudsman has become a standard part of the machinery of any democratic government in the modern world. The institution of ombudsman originated in Scandinavian countries. The Government of India has designated several ombudsmen for the redressal of grievances and complaints from individuals in the banking, insurance and other sectors being serviced by both private and public bodies and corporations. The author in this article has dealt in more details some regulatory authorities impacting common man apart from Banking, Insurance and Income Tax Ombudsman.

The word ombudsman has one familiar element, man, but it is difficult to think of what ombuds could mean? Ombud means "commissioner" coming from Old Norse umbodh, "charge, commission, administration by a delegacy". An ombudsman is someone who investigates complaints made by people against the government or any public organisation. Ombudsman means "the grievance man" or a "commissioner of the administration". A precise definition of Ombudsman cannot be given.

In the flush of power, the administration very often exhibits a tendency to disregard individual rights and interest in the name of public good. It is not eccentric to conclude that if there is more administration, there will be more mal-administration." In these circumstances, the quest for an effective control mechanism over the administration has led the people to the institution of ombudsman.



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Ombudsman is “Public safety Valve” against mal-administration. A good system of administration, in the ultimate analysis has to be responsible and responsive to the people. An Ombudsman has become a standard part of the machinery of any democratic government in the modern world. The institution of ombudsman originated in Scandinavian countries. Sweden was the first country to adopt this institution as early as 1809.

Owing to intensive increase in governmental activities, the occasion of individual grievances multiplied. Referring to this situation, the Justice Report said:” There appears to be a continuous flow of relatively minor complaints not sufficient in themselves to attract public interest, but nevertheless of great importance to the individuals concerned, which gives rise to the feeling of frustration and resentment because of inadequacy of the existing means of seeking redress.”

The Banking, Insurance, Income Tax and Indirect Tax are few sectors which directly impact the professionals and there is need for awareness among professionals about the functioning, jurisdiction and powers of ombudsman in these sectors.

History of Ombudsman in India

Sri M.C. Setalvad, in his speech at the All India Lawyers’ Conference held in 1962 suggested the idea of establishing an institution similar to that of an Ombudsman.

The Central Government introduced the first Lokpal and Lokayuktas Bill in 1968. An Administrative Reforms Commission (ARC) set up on 5th January 1966 recommended a two-tier machinery: *Lokpal at the Centre* and one *Lokayukta* each at the *State level* for redressal of people’s grievances. The Indian Lokpal is synonymous to the institution of Ombudsman existing in the Scandinavian countries. Lokayukta institution has come into existence in different years, in different States in India. Orissa is the first state to present a bill on establishment of Lokayukta in 1970; however, Maharashtra is the first state to have established the institution in 1972.

The Central Government introduced the first Lokpal and Lokayuktas Bill in 1968 and lastly in 2011, the Lokpal Bill was passed by the Lok Sabha (on 27th December 2011).

Need to regulate the Regulators

Soon after the Indian economy began opening to the private sector during 1991-1992, the need for regulation was realised and was translated into action with the establishment of regulatory authorities for different sectors. However, most of these regulatory authorities are still in the evolution. There can never be

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a free-for-all in a market economy, howsoever open it is. The operation of a free market economy in a smooth manner, and without hurting consumer interests, is simply not possible or feasible without an effective regulator. India’s tryst with free market forces began in 1991-1992.

Government began with allowing the private sector to enter the power generation; followed by the - telecom sector with the government allowing the private sector to offer cellular services and following it up with the entire gamut of telecom services, aviation business, oil refining business, private sector petrol pumps Insurance business, piped supply of gas. The list is virtually endless.

Regulatory Authorities impacting common man

If *state monopoly* is bad, *private monopoly* could be worse. Private sector entered areas hitherto reserved for the public sector. This necessitated the setting up of regulatory bodies. Even though there are large number of regulatory authorities — from Coir Board to Coastal Zone Authority — not all of them impact the common man in his daily life. Following are some regulatory authorities impacting common man apart from Banking, Insurance and Income Tax which are dealt with in this article in more details.

- Telecom Regulatory Authority of India (TRAI) ;
- Securities Exchange Board of India (SEBI);
- Forward Markets Commission (FMC);
- Central & State Electricity Regulatory Commission (CERC & SERC);
- Pension Fund Regulatory Development Authority ;
- Airport Economic Regulatory Authority;
- Petroleum and Natural Gas Regulatory Board

Telecom Regulatory Authority of India (TRAI)

Soon after allowing the private sector to offer telecom services in Delhi and Mumbai there was a mad rush by private operators. Bids were ridiculously high and all new private telecom companies collapsed when they began to demand such high tariffs that potential customers simply disappeared. In order to regulate all this, the TRAI was set up in 1997. But the TRAI got into a series of spats with Department of Telecommunication (DoT). Being both the licensor and the policy-maker, there was a serious conflict in roles DoT played as it was also a player and competing with the new private

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entrants. This resulted in an amendment in the TRAI Act to give more teeth to the regulator. A super regulator on top of TRAI Telecom Dispute Settlement and Appellate Authority (TDSAT) was also set up in 2000 to appeal against any TRAI order.

Securities Exchange Board of India (SEBI)

Although SEBI notified the SEBI (Ombudsman) Regulations, 2003 for the establishment of the Office of the Ombudsman to redress the grievances of investors in the securities and capital market, one of the weakest areas in investor protection in the capital and securities market has been the poor grievance redressal mechanism. Despite several attempts, market regulator SEBI has failed to successfully implement the ombudsman method for grievance redressal.

Speedy redressal of investor grievances that was the driving force behind SEBI's August 2003 ombudsman regulations has not taken off due to legal hitches. There is a need for setting up an independent ombudsman.

Forward Markets Commission (FMC)

As for FMC which now regulates the national multi-commodity exchange (MCX), the less said, the better. When inflation is shooting high, there is widespread demand, including from political circles, that there should be serious curb on the commodity exchange, as its futures trading had led to food articles' price inflation. Today, the regulator is safe but food articles prices continue to be high.

Central Electricity Regulatory Commission (CERC) & State Electricity Regulatory Commission (SERC)

CERC and SERC are the two **electricity regulators**—one operating at the central level and the other at various state levels. Both CERC and SERC have been taking tough stand in resolving disputes between different power generators, fixing of tariff, wheeling of power and distribution of power, especially after the private sector entered every gamut of the power sector. But their role in meeting consumer interests remains largely undefined, though the electricity regulators are supposed to ensure that power companies, whether at generation level or at the consumer end (that is distribution), do not indulge in profiteering.

The following New Regulators are yet to make their presence.

1. Pension Fund Regulatory and Development Authority (PFRDA)

PFRDA was established by Government of India on 23rd August, 2003. The Government has, through an executive order dated 10th October, 2003, mandated PFRDA to act as a regulator for the pension sector. The mandate of PFRDA is development and regulation of pension sector in India.

2. Petroleum & Natural Gas Regulatory Board (PNGRB)

The Petroleum and Natural Gas Regulatory Board (PNGRB) was constituted under The Petroleum and Natural Gas Regulatory Board Act, 2006 (NO. 19 OF 2006) notified *vide* Gazette Notification dated 31st March, 2006 to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to promote competitive markets and for matters connected therewith or incidental thereto.

3. Airports Economic Regulatory Authority (AERA)

The Airports Economic Regulatory Authority (AERA) is a statutory body constituted under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008) was established by the Government *vide* its Notification No. GSR 317 (E) dated 12-05-09 with its head office at Delhi.

Banking Ombudsman

The Banking Ombudsman Scheme was introduced under Section 35A of the Banking Regulation Act, 1949 by RBI with effect from 1995. A senior official shall be appointed by the Reserve Bank of India to redress customer complaints against deficiency in certain banking services. As on date, 15 Banking Ombudsmen have been appointed with their offices located mostly in state capitals. All Scheduled Commercial Banks, Regional Rural Banks and Scheduled Primary Co-operative Banks are covered under the Scheme. Banking Ombudsman is a quasi judicial authority.

Territorial jurisdiction

- Branch of the Bank complained against
- In case of services with centralised operations and

Soon after the Indian economy began opening to the private sector during 1991-92, the need for regulation was realised and was translated into action with the establishment of regulatory authorities for different sectors. ”

Credit Cards, it can be the place of residence of the complainant

Prerequisite

Before making a complaint to Ombudsman, Complainant should make a written representation to the Bank. Bank should have either *rejected* the complaint or an *unsatisfactory reply* should have been received or the complaint should stand *un-replied* for at least one month. The complaint must be lodged within one year of the events mentioned above

Type and Scope of the complaints considered by a Banking Ombudsman is very comprehensive. Banking Ombudsman does not charge any fee. Complaint can be filed by an authorised representative.

Maximum limit on the amount of compensation is ₹10 lakh. In addition the maximum compensation ₹1 lakh for mental agony and harassment is also prescribed. If the award is acceptable, the complainant has to send letter of acceptance of the award in full and final settlement to the concerned Bank. Not satisfied with the decision passed by the Banking Ombudsman, one can approach the appellate authority against the Banking Ombudsmen's decision. Appellate Authority is vested with a Deputy Governor of the RBI.

Types of Complaints

- non-payment or inordinate delay in the payment or collection;
- non-acceptance, without sufficient cause, of small denomination notes or coins tendered and for charging of commission for this service;
- non-payment or delay in payment of inward remittances ;
- failure or delay in issue, of drafts, pay orders or bankers' cheques;
- non-adherence to prescribed working hours;
- failure or delay in providing a banking facility (other than loans and advances) promised in writing by a bank or its direct selling agents;
- delays, non-credit of proceeds to parties' accounts, non-payment of deposit or non-observance of the Reserve Bank directives, if any, applicable to rate of interest on deposits in any savings, current or other account maintained with a bank ;
- delays in receipt of export proceeds, handling of export bills, collection of bills, etc., for exporters provided the said complaints pertain to the bank's operations in India;
- refusal to open deposit accounts without any valid reason for refusal;
- levying of charges without adequate prior notice to the customer;

In order to regulate telecom services, the TRAI was set up in 1997. A super regulator on top of TRAI Telecom Dispute Settlement and Appellate Authority (TDSAT) was also set up in 2000 to appeal against any TRAI order.

- non-adherence by the bank or its subsidiaries to the instructions of Reserve Bank on ATM/debit card operations or credit card operations;
- non-disbursement or delay in disbursement of pension to the extent the grievance can be attributed to the action on the part of the bank concerned, (but not with regard to its employees);
- refusal to accept or delay in accepting payment towards taxes, as required by Reserve Bank/ Government;
- refusal to issue or delay in issuing, or failure to service or delay in servicing or redemption of Government securities;
- forced closure of deposit accounts without due notice or without sufficient reason;
- refusal to close or delay in closing the accounts;
- non-adherence to the fair practices code as adopted by the bank; and
- any other matter relating to the violation of the directives issued by the Reserve Bank in relation to banking or other services.
- deficiency in Internet banking services;
- non-adherence to the provisions of Fair Practices Code for lenders as adopted by the banks or Code of Banks Commitment to Customers;
- non-observance of Regulatory guidelines on engagement of recovery agents by the banks.

Insurance Ombudsman

It is created by a Government of India Notification dated 11th November, 1998. Governing body of insurance council issues orders of appointment of the Insurance Ombudsman. The governing body of insurance council consists of representatives of insurance companies. The term of office is for three years or 65 years of age whichever is earlier. Governing body has appointed twelve Ombudsmen across the country allotting them different geographical areas as their areas of jurisdiction. Ombudsman has to perform two types of functions (1) conciliation, (2) Award making. Ombudsman's powers are restricted to insurance contracts of value not exceeding ₹20 lakh.

The insurance companies are required to honour the awards passed by an Insurance Ombudsman within three months. The complaint is not made later than one year after the insurer had replied.

No fees/charges payable for lodging a complaint. In case both parties agree for mediation, the Ombudsman shall give his recommendation within one month; otherwise, he shall pass his award within three months from the date of receipt of the complaint. The awards are binding upon the insurance companies. If the policy holder is not satisfied with the award of the Ombudsman he can approach other venues like Consumer Forums and Courts of law for redressal of his grievances. As per the policy-holder's protection regulations, every insurer shall inform the policy holder along with the policy document in respect of the insurance Ombudsman in whose jurisdiction his office falls for the purpose of grievances redressal arising if any subsequently.

Pre-requisite conditions for lodging a complaint

1. The complaint must be by an individual on a 'Personal Lines' insurance and within the terms of reference of the Insurance Ombudsman.
2. A representation should stand made to the Insurance Company and either an unsatisfactory reply should have been received or the representation should stand un-replied for at least one month.
3. The complaint must be lodged within one year of the events mentioned above.
4. The total relief sought must be within an amount of ₹20 lakh.
5. The subject matter of the complaint should not currently be or have earlier been before a Court/ Consumer Forum.

Territorial jurisdiction

- Branch or Office of the Insurer complained against.
- In case of Group Insurance policies, it can be the place of residence of the complainant.

Personal lines

Any aggrieved individual who has taken an Insurance Policy on personal lines (or if deceased, the legal heir(s) under such policy) can approach Ombudsman.

Insurance on personal lines means a policy taken or given in an individual capacity, e.g. life insurance, personal accident insurance, mediclaim insurance, insurance of personal property of the individual such as motor vehicle, household articles, etc.

A II Scheduled Commercial Banks, Regional Rural Banks and Scheduled Primary Co-operative Banks are covered under the Scheme. Banking Ombudsman is a quasi judicial authority. ”

Type of Complaints that can be entertained

Complaints pertaining to -

- repudiation of claims totally or partially,
- delay in settlement of claims,
- any dispute on the legal construction of the policies in so far as such disputes relate to claims,
- disputes regarding premiums paid/payable and non-issue of insurance documents.

The Complaint is to be made in writing and may be lodged through personal approach or through post/fax/email (followed by hard copy).

Income Tax Ombudsman

Epitome of the Income Tax Ombudsman Guidelines, 2006

'Income tax authority complained against' means the junior-most Income Tax Officer not below the rank of an Income Tax Officer who has given the cause of grievance to the complainant. The Ombudsman shall be independent of the jurisdiction of the Income Tax department. Tenure is two years extendable by one year or age of 63 years, whichever is earlier. No reappointment. The Central Government shall specify the territorial jurisdiction of each Ombudsman. Ombudsman to send a monthly report to the Chairman, CBDT and Secretary, Department of Revenue in the Ministry of Finance recommending appropriate action.

Procedure for filing the complaint

- make a complaint against the Income-tax official in writing to the Ombudsman for grievance either personally or through the authorised representative.
- complaint shall be duly signed by the complainant and the authorised representative, if any
- Clearly state:
 - 1) Name and address;
 - 2) Income Tax authority against complain is made;
 - 3) Documents submitted to the Income Tax authority;
 - 4) The issue for which the redressal is sought.
- Also mention:
 - 1) Date on which first complaint was made to the income-tax authorities;
 - 2) The higher authority approached after the first level failed to respond; and
 - 3) The time gap since following on the complaint.

Complaint made through electronic means shall also be accepted.

A complaint to the Income-tax Ombudsman, not only will it benefit the complainant, but also benefit others. Thus, approaching the ombudsman also helps the government and authorities to better our tax process. ”

Pre-requisite conditions for lodging a complaint

Before making a complaint to the Ombudsman, you (Complainant) should make a written representation to the Income Tax Authority superior to the one complained against such authority should have either *rejected* the complaint or an *unsatisfactory reply* should have been received or the complaint should stand *un-replied* for at least one month.

The complaint must be lodged within one year of the events mentioned above. The complaint is not in respect of the same subject matter which was settled through the Office of the Ombudsman in any previous proceedings. No complaint shall be made to the Income-tax Ombudsman on an issue which has been or is the subject matter of any proceeding in an appeal, revision, reference or writ before any Income Tax Authority or Appellate Authority or Tribunal or Court.

Grounds on which complaint shall be filed

A complaint on any one or more of the following grounds alleging deficiency in the working of the Income-tax Department may be filed with the Ombudsman:

- (a) delay in issue of refunds beyond time limits prescribed by law or under the relevant instructions issued from time to time by the Central Board of Direct Taxes;
- (b) sending of envelopes without refund vouchers in cases of refund;
- (c) non adherence to the principle of 'First Come First Served' in sending refunds;
- (d) non acknowledgement of letters or documents sent to the department;
- (e) non up-dating of demand and other registers leading to harassment of assesseees;
- (f) lack of transparency in identifying cases for scrutiny and non communication of reasons for selecting the case for scrutiny;
- (g) delay in disposing cases of interest waiver;
- (h) delay in disposal of rectification applications;
- (i) delay in giving effect to the appellate orders;
- (j) delay in release of seized books of account and assets, after the proceedings under the Income-tax Act in respect of the years for which the books of account or other documents are relevant are completed;

- (k) delay in allotment of permanent account number (PAN);
- (l) non-credit of tax paid, including tax deducted at source;
- (m) non-adherence to prescribed working hours by Income Tax officials;
- (n) unwarranted rude behaviour of Income Tax officials with assesseees;
- (o) any other matter relating to violation of the administrative instructions and circulars issued by the Central Board of Direct Taxes in relation to Income-tax administration.

Award

The ombudsman mediates between the income-tax department and the tax-payer or tax assessee and seeks to settle the issue and pass a decision also called 'award', based on the income-tax rules and guidelines.

If a complaint is not settled by agreement within a period of one month from the date of receipt of the complaint or such further period as the Ombudsman may consider necessary, he may pass an award after affording the parties reasonable opportunity to present their case.

'Award' passed shall be a speaking order.

A token compensation amount not exceeding ₹1,000/- can be awarded for the loss suffered by the complainant.

Award shall not be binding on the Income Tax Department unless the complainant furnishes to it, within a period of 15 days from the date of receipt of a copy of the award, a letter of acceptance of the award in full and final settlement of his complaint.

If the complainant *does not accept* the Award passed by the Ombudsman or *fails to furnish* his letter of acceptance within the said period of 15 days or within such time, not exceeding a period of 15 days that may be granted by the Ombudsman, the award shall lapse and be of **no effect**.

Concluding remarks

A complaint to the ombudsman, not only will it benefit

The Indirect Tax Ombudsman Guidelines, 2011 came into force from 11th May, 2011 are introduced with the objective of enabling the resolution of complaints relating to public grievances against the Customs, Central Excise and Service Tax Department and to facilitate the satisfaction or settlement of such complaints. ”

you, but also benefit others. The ombudsman is asked to make a *note of the problem areas for taxpayers*, which is then sent to the CBDT and the Union Finance Ministry. He also sends a report once a year to the Government of India and the CBDT to inform them of officials who have not been acting the right way. Thus, approaching the ombudsman can help the government and authorities better our tax process.

Indirect Tax Ombudsman

The Indirect Tax Ombudsman Guidelines, 2011 which came into force from 11th May, 2011 are introduced with the objective of enabling the resolution of complaints relating to public grievances against the Customs, Central Excise and Service Tax Department and to facilitate the satisfaction or settlement of such complaints. These are more or less on similar lines as The Income Tax Ombudsman Guidelines, 2006.

Grounds on which complaint shall be filed

A complaint on any one or more of the following grounds alleging deficiency in the working of the Customs, Central Excise and Service Tax Department may be filed with the Ombudsman:

- (a) delay in the issue of refunds or rebate beyond time limits prescribed by law or under the relevant instructions issued from time to time by the Central Board of Excise and Customs;
- (b) delay in adjudication;
- (c) delay in registration of tax payers;
- (d) delay in giving effect to Appellate orders;
- (e) non-adherence to the principle of "First Come First Served" in sending refunds;
- (f) non-adherence to the rules prescribed for disbursement of drawback;
- (g) non-acknowledgement of letters or documents sent to the department;
- (h) delay in release of seized books of account and assets, after the proceedings under the Customs, Central Excise and Service Tax statutes in respect of the years for which the books of account or other documents are relevant are completed;
- (i) non-adherence to prescribed working hours by Customs, Central Excise and Service Tax officials;
- (j) unwarranted rude behaviour of Customs, Central Excise and Service Tax officials with assesseees;
- (k) any other matter relating to violation of the administrative instructions and circulars issued by the Central Board of Excise and Customs (CBEC) in relation to Customs, Central Excise and Service Tax administration.

The institution of ombudsman is considered as easy, quick and inexpensive machinery for the redress of individual grievances of the citizens. ☺

Provided that, if on any of the grounds above, the responsibility for taking action is with the CBEC or on a Centralised authority e.g., [Director General (Systems)], then the Ombudsman shall not have the power to pass an award. In such cases, the decision of the Ombudsman shall be recommendatory in nature and shall be forwarded in writing to the Revenue Secretary or the Chairman, CBEC or the centralised authority, as the case may be.

A token compensation amount not exceeding ₹5,000/- can be awarded for the loss suffered by the complainant in addition to an award after allowing the parties a reasonable opportunity to present their case.

Conclusion

A good system of administration, in the ultimate analysis has to be responsible and responsive to the people. The Government of India has designated several ombudsmen for the redressal of grievances and complaints from individuals in the banking, insurance and other sectors being serviced by both private and public bodies and corporations. The institution of ombudsman is considered as easy, quick and inexpensive machinery for the redress of individual grievances of the citizens. However, most of these regulatory authorities are still in the evolution.

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