

Kerala's Ombudsman: A Mismatch of Mission and Capabilities

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India, like many developing nations, has adopted many accountability institutions. One of these is the ombudsman. Originally a Swedish invention, ombudsman's offices were adopted by many countries over the last 50 years. Recently, the South Indian state of Kerala has instituted an ombudsman's office. While it has had notable successes in resolving minor cases related to local government institutions, it is severely constrained by an unresponsive state government. In particular, the Kerala ombudsman requires independent investigative powers and an expansion of its office.

Over the past decade developing countries around the world have adopted many accountability institutions. This phenomenon has been particularly evident in India. Watchdog offices, grievance redressal forums, social audits, and other innovative solutions have been employed across the country in order to combat the pervasive corruption and maladministration that plagues most of India's government institutions. The challenge now is to try and assess which of these have been successful, which have failed, and how they may be improved.

One type of institution that is included in this wave of accountability reforms is the office of the ombudsman. An ombudsman is intended to serve as a powerful and independent watchdog to monitor government behavior and act as an advocate for those affected by mismanagement and maladministration. The ombudsman is a Swedish invention, although it was adopted in many Western countries in decades following the Second World War. Recently, the ombudsman model has also spread throughout the developing world, particularly in Latin America.

The South Indian state of Kerala established an ombudsman's office in 2001. Like other developing regions suffering from an accountability deficit, Kerala adopted the ombudsman system to act as a check on bad government behavior. Corruption in local government had become a large problem since Kerala shifted the administration of many public services from state control to local self-government institutions (LSGIs) in the mid-1990s. As one of the earliest ombudsmen wrote in 2003, "It did not

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take much time for the government to realize that corruption and corrupt practices started pervading the administration of LSGI[s]. The Government perforce had to introduce [the ombudsman] with the avowed objective of eradication of corruption, maladministration or irregularities" in local government.

Little academic consideration has been given to whether the Kerala ombudsman has met these high expectations. In order to better understand the institution and its applicability elsewhere in India, the Accountability Initiative (a think tank housed in the Centre for Policy Research in New Delhi), along with the Research Foundation for Governance in India (an NGO based in Gujarat), commissioned a field study of the institution that was undertaken in May–June 2010. This preliminary study found that while the office of the Kerala ombudsman has been moderately successful within its narrow jurisdiction, the lack of support from the state government imposes severe constraints. First, the ombudsman's lack of investigative capacity undermines its effectiveness and impartiality. Second, a single ombudsman is not sufficient to make the institution accessible to the rural poor.

The ombudsman is always a former high court judge and may only consider complaints against LSGIs. Most often, these are complaints against a *panchayat*—the most common level of local government body. Each year the ombudsman sees around 1,100 cases. Because LSGIs are responsible for so many public services, the complaints concern a wide variety of issues. At the hearings observed during the research for this article, there were complaints about the construction of public toilets, misplacement of funds for government contracts, the allocation of houses for the poor, the behavior of a commission under the control of a *panchayat*, and allegations of pollution in public waters.

To hear cases and engage with the public, the ombudsman travels around the state holding sittings in various cities and towns. To resolve complaints, the ombudsman has extensive legal powers. He or she may initiate investigations, compel parties to attend sittings, and issue binding orders to individuals and LSGIs. The power given to the ombudsman is incredibly concentrated. The ombudsman alone controls every stage of the grievance redressal process. No other individuals within the ombudsman's office have powers or responsibilities that extend beyond simple administration.

However, the ombudsman works within severe constraints. Most significantly, the ombudsman lacks investigative capability. The majority of cases brought to the ombudsman require investigation. For example, a complaint about the improper construction of a public well would require someone to travel to the location, take photographs, interview locals and LSGI officials, and write a report that is submitted to the ombudsman at the next hearing of the case. Without the facts provided by an investigation the ombudsman would rarely have enough information to decide a case.

Every ombudsman since 2001 has requested additional funding to hire an investigative team, and the state government has always refused, forcing the ombudsman to look elsewhere. He is legally able to compel the police to assist in investigations, but in practice they rarely cooperate. As the ombudsman's administrative secretary explained, "they have their own arena of working. Under control of [the police department] they have more freedom than when they work for someone else."

Instead, the ombudsman must turn to the Deputy Director of Panchayats (DDP) or Assistant Deputy Director of Panchayats (ADDP). These are state employees who work with specific *panchayats*. Relying on these officials is problematic. They often have little experience with investigations of any kind and have many additional duties of their own. The ombudsman says that many cases are delayed for months while the DDP or ADDP completes an investigation. This practice also erodes the impartiality of the institution. The DDPs' and ADDPs' work requires them to have a close relationship with the *panchayats*. It is plausible that some of them could believe their interests lie closer to the *panchayats* than to the ombudsman, creating an incentive to protect LSGI officials rather than investigate them fairly.

The second significant constraint is an obvious one: There is only one ombudsman for all of Kerala, a state of more than 30 million people. Originally the institution had seven members who constituted three benches, each assigned to see cases from different regions of the state. However, after the initial year, the state legislature amended its legislation to reduce the institution to a single member. The current ombudsman said that the cost of maintaining such a large office motivated the change.

As a result, the ombudsman does not have the time to travel to many rural regions of the state. Most sittings are held in the largest cities, and so complainants from rural regions must travel great distances to take up their case. For an institution that aims to serve the poor, this is particularly troublesome. The complainant must fund several trips to a sitting, as well as suffer lost income from taking days off to pursue their complaint. If the legislature approved funding for two additional ombudsmen, the institution could hear more complaints, and the cost barriers to poor litigants would drop since many would no longer have to travel so far to attend hearings.

The ombudsman fills an important niche. The institution has been used by thousands of citizens to pursue complaints against local governments, and remains a popular alternative to the courts. There may be further impediments to effective implementation, but at present the largest and most obvious obstacle is an unresponsive and neglectful state government. The current ombudsman, like his predecessors, continues to request additional funding for an investigative team and expansion of the institution. The ombudsman will only be able to meet the initial expectation that it might serve as a powerful and independent force for accountability once it is no longer constrained by the unresponsive state government.

This research note is based on the following report: Stark, Joshua J. M. 2010. *The Kerala Ombudsman*. Delhi: Accountability Initiative. <http://www.accountabilityindia.in/sites/default/files/the_kerala_ombudsman.pdf>. (February 18, 2011).