

# The Kerala Ombudsman

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**ACCOUNTABILITY INITIATIVE**  
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## **Case Studies in Accountability**

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# contents

<b>INTRODUCTION</b>	<b>3</b>
■ The Ombudsman: Theory and Origins	4
■ The Ombudsman as an Institution: International Experience	5
<b>A NOTE ON METHODOLOGY</b>	<b>10</b>
■ Evolution and basic features	10
■ Accessing the Ombudsman	13
■ The Ombudsman's Sittings	14
■ Cases and Complaints	16
<b>ANALYSIS</b>	<b>18</b>
■ Concentration of power	18
■ Dependency on outside investigation	19
■ Limited jurisdiction	20
■ Public hearings and accountability	20
<b>CONCLUSIONS</b>	<b>21</b>
<b>REFERENCES</b>	<b>23</b>
<b>APPENDIX 1 – DATA</b>	<b>24</b>

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## INTRODUCTION

The Ombudsman has long been one of the world's most prominent grievance redressal institutions. Originally from Sweden, it has been widely adopted by other countries over the past five decades. Today, Ombudsman's offices have been established in the United States, Canada, most EU nations, New Zealand, the Philippines, Australia and many other countries.

In India, the concept of Ombudsman was introduced by the Administrative Reform Commission of 1966 which recommended the setting up of an Ombudsman both at the Center (Lokpal) and the State (Lokayukta) with varying degrees of Power. Since then, 17 states have set up Lokayuktas headed by retired judges. However, the Lokpal is still to be introduced at the Center. In 2001, Kerala became the first, and only State in India, to set up an Ombudsman office for local governments (district and below). Like others around the world, the Kerala Ombudsman is tasked with resolving citizen's complaints against government employees and offices. Unlike a typical court process, the Kerala Ombudsman follows an informal process, does not require legal representation, and attempts to ensure the execution before closing a case file.<sup>1</sup> The Kerala Ombudsman considers only complaints against local self government institutions (LSGIs) and therefore tends to focus on service delivery and the interaction between local government and citizens.

Despite being unique in India, the institution has received scant academic attention. This case study attempts to begin a conversation about the Kerala Ombudsman by presenting a detailed account of its powers, functions, strengths and weaknesses, as well as raising a few specific points of critical analysis.

This study is not only long overdue, but particularly timely. Under the National Rural Employment Guarantee Act (NREGA) efforts are underway to create a nationwide system of Ombudsmen tasked with resolving complaints related to NREGA work projects. On the eve of such a massive project, it is urgent that we consider what can be learnt from the only other comparable Indian institution. To this end, the paper discusses how the experience of the Kerala Ombudsman can provide useful learning's for the replication of such efforts.

This study contains three sections. The first section discusses the Ombudsman as an institution –its history and origins, and seeks a precise definition. The paper then presents examples from three countries which further illuminate key features of the Ombudsman.

The second section is the case study of the Kerala Ombudsman. This section describes the evolution and basic features of the institution, presents an account of its process and functions, discusses the

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<sup>1</sup> Nair, Justice M. R. Hariharan. Personal interview. 2, 4 May 2010

complaints submitted to the Ombudsman along with specific examples, and concludes by offering a few points of critical analysis.

The third and final section, attempts to draw out lessons from the experience of the Kerala Ombudsman that could prove useful going forward with efforts such as the NREGA one to establish Ombudsman offices at the district level.

## The Ombudsman: Theory and Origins

The Ombudsman is originally a Swedish institution. The “Special Parliamentary Commissioner for Judiciary and the Civil Administration” (*Justitieombudsmannaambetet*) was first instituted by the Swedish constitution of 1809.<sup>2</sup> The Ombudsman reflected the then-novel idea that institutions, rather than solely broad political structures like the separation of powers, were needed to protect the rights of the individual.<sup>3</sup>

The Swedish Ombudsman enforces “the observance of laws and statutes as applied in all other matters by the courts and by public officials and employees” and can prosecute “those who, in the exercise of their official duties, have through partiality, favouritism, or other cause committed any unlawful act or neglected to perform their official duties properly.”<sup>4</sup> To do so, Ombudsmen can attend the deliberations of any Swedish court, inspect public institutions, and are given access to the records of all courts, boards, and public offices.<sup>5</sup>

The Swedish Ombudsman was the model for what is now known as the “classical” Ombudsman. This designation is important because there are many institutions today that use the name “Ombudsman” that have little in common with the original Swedish institution. While the classical Ombudsman has varying definitions that emphasize different features,<sup>6</sup> there appears to be a settled core of meaning. The classical Ombudsman must be:

1. **Established and independent.** Must be formerly enshrined in law and operationally independent and autonomous.
2. **Powerful.** Must have the ability to investigate complaints in full, and must be able to meaningfully use the findings of the investigation. For instance, by initiating prosecution or issuing recommendations.
3. **Fair and impartial in attitude.** Must not be anti-administration, nor anti-citizen. Must simply seek to find the truth of the matter and act on its findings.

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<sup>2</sup> Jagerskiold, Stig. “The Swedish Ombudsman.” *University of Pennsylvania Law Review* Vol. 109 (8) 1961: 1078.

<sup>3</sup> *Ibid.*, 1080.

<sup>4</sup> *Regeringsformen*, article 96 *via* Jagerskiold, Stig, 1082.

<sup>5</sup> Jagerskiold, Stig, 1079.

<sup>6</sup> For instance, in Larry B. Hill’s book *Model Ombudsman* (12) and “Essential Characteristics of a Classical Ombudsman”, a reference document available through the United States Ombudsman Association at: [http://www.usombudsman.org/en/references/more\\_references/](http://www.usombudsman.org/en/references/more_references/).

It should be noted that this definition obscures an important distinction. There are two ways an institution could not meet the above criteria for a classical Ombudsman. The first is simply to not be designed as such – for example, an “Ombudsman” who works within a company to address complaints from employees is not a classical Ombudsman because he or she is not independent from the company itself. In this case, the institution is not intended to be a classical Ombudsman. The second is for an institution to aim to be a classical Ombudsman, but fall short because of external pressures or internal weaknesses. For instance, an Ombudsman may lack power because its efforts are blocked by the police, or because institutions are uncooperative, or because its’ staff are incompetent.

Frank Ugglá provides a matrix that takes this possibility into account.<sup>7</sup> By considering variations in power and autonomy, he classifies Ombudsmen as falling into one of four categories:

	<b>Autonomous</b>	<b>Not Autonomous</b>
<b>Powerful</b>	(1) Proper Ombudsman	(2) Political instrument
<b>Not Powerful</b>	(3) “Dead-end street”	(4) Facade

Only (1) is a functional version of the classical Ombudsman. It is autonomous from the state and has the power to act on its findings. If an Ombudsman has power but lacks autonomy (2), then it could become a tool of the state – it can initiate prosecution, but only when those who control it allow this to happen. When an Ombudsman lacks power but remains autonomous (3), it is ineffective because it can do nothing with the complaints it receives. It allows citizens to submit grievances but the institution is unable to do anything more. If an Ombudsman lacks both power and autonomy (4), then it is a “facade” – an office that has no interest in receiving complaints nor acting on them.<sup>8</sup>

## **The Ombudsman as an Institution: International Experience**

The classical model of the Ombudsman has been adopted in many countries. Denmark instituted an Ombudsman in 1954.<sup>9</sup> An Ombudsman was created in New Zealand in 1962.<sup>10</sup> In 1969 Hawaii became the first American state to create an Ombudsman, and today they exist in five states and various urban areas.<sup>11</sup> By 1996 most Canadian provinces had an Ombudsman.<sup>12</sup> In the 1980s and 1990s Latin American countries such as Nicaragua, Guatemala and Peru created Ombudsman offices - locally called a *Procurador de Derechos Humanos*.<sup>13</sup>

However, implementation methods and success vary greatly even among classical Ombudsmen. This section examines Ombudsman’s offices in three places: Sweden, the American state of Hawaii, and Latin America. Each example provides useful insights into the institution as a whole. The Swedish

<sup>7</sup> Ugglá, Frank. “The Ombudsman in Latin America.” *Journal of Latin American Studies* vol 36(3) 2004: 423-450, 428

<sup>8</sup> Ibid.

<sup>9</sup> Jagerskiöld, 1077

<sup>10</sup> Ombudsmen – History of the Office. Office of the Ombudsman (NZ). Web. 10 May 2010 <<http://parliamentarian/index.php?CID=100014>>

<sup>11</sup> Hill, Larry B. “The Ombudsman Revisited: Thirty Years of Hawaiian Experience” *Public Administration Review* vol 62(1) 2002: 24-41, 24

<sup>12</sup> What is an Ombudsman? Forum of Canadian Ombudsman. Web. 10 May 2010 <[http://www.ombudsmanforum.ca/whatis\\_e.asp](http://www.ombudsmanforum.ca/whatis_e.asp)>

<sup>13</sup> Ugglá, 427

Ombudsman provides an account of the institutions development, and offers the best account of the simple, unmodified “classical” Ombudsman. The Hawaiian Ombudsman, which interacts with citizens very differently than most, shows how the institution can be modified to suit its particular environment. Investigating the Latin American Ombudsman illustrates how the institution can be subject to external pressures, and how it can react.

As described earlier, the Swedish Ombudsman aims to hold public officials accountable, according to relevant laws and regulations.<sup>14</sup> The Ombudsman’s jurisdiction is broad: he or she can investigate complaints against local, regional or central government.<sup>15</sup> Citizens access the Ombudsman by submitting written complaints to the Ombudsman directly, although the Ombudsman can initiate his or her own investigations based on media reports or other sources.<sup>16</sup> All complaints submitted by citizens are investigated, as long as they are signed, although about half turn out to be outside of the Ombudsman’s jurisdiction. For example, the Ombudsman cannot investigate the actions of a private citizen.<sup>17</sup> Complainants receive initial feedback on their case, frequently on the same day it is submitted.<sup>18</sup>

Once a complaint is received, the Ombudsman begins an investigation. To do so he or she may compel any public official to assist in the investigation, and may request relevant documents.<sup>19</sup> Essentially, the Ombudsman speaks to relevant individuals – the accused administrator, those who work with him, his subordinates and superiors – and consults official records to determine the facts of a complaint.<sup>20</sup> To resolve the case, the Ombudsman functions as a public prosecutor. He may initiate prosecution against the responsible official or institution, though he is also able to request corrective action or issue a formal warning.<sup>21</sup> Rarely does the Ombudsman need to resort to prosecution to persuade an institution to change its behaviour or rectify a mistake.<sup>22</sup>

Contrast this with the far more informal office of the Hawaiian Ombudsman which allows citizens to make complaints by telephone, and the majority of complaints are submitted in that way.<sup>23</sup> When a citizen calls to submit a complaint they first speak with the office receptionist who determines whether the caller has a complaint within the Ombudsman’s jurisdiction, or whether they need to be referred to another office.<sup>24</sup> If the complaint is within jurisdiction, the call is passed on to an analyst. After the complaint is submitted, the analyst dictates the contents of the conversation to a tape recorder, and the tapes are later transcribed by secretaries. More recently, some investigators have begun recording the content of their conversations in a word processor.<sup>25</sup> The transcripts and other relevant documents are

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<sup>14</sup> There is also a military Ombudsman in Sweden. However for the purposes of this paper, we will focus on the civil Ombudsman.

<sup>15</sup> Rosenthal, Albert H. “The Ombudsman – Swedish ‘Grievance Man’” *Public Administration Review* vol 24(4) 1964: 226-230, 228.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*, 228-229.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Jagerskiold, 1084.

<sup>21</sup> Rosenthal, 228.

<sup>22</sup> *Ibid.*, 229.

<sup>23</sup> Hill, 25. Between 1997-2002, 95% of complaints were submitted by phone, 4% were submitted through letters, and 1% visited the office in person.

<sup>24</sup> *Ibid.*, 27.

<sup>25</sup> *Ibid.*, 25.

kept together in individual case files.

The actual process of redressal is also highly informal. The Ombudsman's office has generally employed eight analysts whose duty is to resolve complaints. On any given day, one analyst will have complaint duty, and all complaints submitted on that day are his or her responsibility.<sup>26</sup> The rest of the working week is dedicated to investigating and resolving complaints. Most investigations are carried out over the telephone.

Weekly staff meetings allow analysts to present the complaints they're presently working on and receive advice from other analysts and the Ombudsman.<sup>27</sup> It also enables the Ombudsman to hold his staff accountable by monitoring their progress.<sup>28</sup> Whenever official correspondence with complainants or bureaucrats is required, the Ombudsman reviews it before it is mailed. While the Ombudsman does not have legal power to compel a bureaucracy to reverse a decision or take specific action, nonetheless it appears to be effective. About 39% of complaints are withdrawn by the complainant, 36% are found to be baseless, and the remaining 25% are sustained. In 86% of the sustained complaints, the Ombudsman is able to persuade the institution or bureaucracy in question to resolve the matter - either by reversing an earlier decision or altering its actions in some other way.<sup>29</sup>

The Latin American Ombudsman offers yet another experience. Ombudsmen were created in Guatemala (1985), Mexico (1990), Columbia (1991), El Salvador (1991), Honduras (1992), Argentina (1993), Peru (1993), and Bolivia (1994).<sup>30</sup> Though of course there are variations between each country, some experiences have been broadly shared by all of the Ombudsmen in Latin America and for this reason can be discussed as a group. Like the original Swedish institution, the Ombudsmen are designed to function as public prosecutors and can bring a case before the courts, although it is of course the courts which decide the matter.<sup>31</sup> Though they lack independent legal power, they are able to issue resolutions based on their findings when investigating government offices.<sup>32</sup> The institution is said to exercise a 'moral power', the effectiveness of which depends on whether or not the office in question accepts the legitimacy of the Ombudsman's resolutions.<sup>33</sup>

However despite the institutional similarities, the Latin American Ombudsmen have functioned very differently in practice. While in Europe and North America, Ombudsmen focused on individual complaints, the dire human rights and accountability situation in Latin America prompted the Ombudsmen to instead tackle mass violations of individual rights.<sup>34</sup> Faced with weak institutional powers and a hostile political environment, Ombudsmen in Latin American more often employed their public role to effect change. As Frederik Uggla says:

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<sup>26</sup> Ibid., 26.

<sup>27</sup> Ibid., 27.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid., 28. This data is from 1969 – 1999.

<sup>30</sup> Uggla, 430.

<sup>31</sup> Ibid., 432.

<sup>32</sup> Ibid., 424.

<sup>33</sup> Ibid., 428.

<sup>34</sup> Ibid., 425.

“The need to construct a basis of support and reach out to public opinion reveals the somewhat anomalous character of the [Latin American] Ombudsman. Indeed, it often appears as a pressure group rather than a state institution. In common with pressure groups, the ombudsman has to advance an agenda in a general context that is often indifferent or hostile; it also lacks the instruments to ensure that its decisions and resolutions are fulfilled. Popular support and favourable media coverage therefore become important factors for compliance and influence, or as one source from Peru remarked, ‘they don’t want to challenge us as this would imply a political cost.’”<sup>35</sup>

In practice, this often means a combative relationship with other state institutions. In Guatemala, the Ombudsman denounced prominent politicians. In Honduras, the Ombudsman publicly voiced support for the opposition candidate’s right to run for President. The Peruvian Ombudsman accused the ruling party of fraud, and in Colombia, publicly criticized the military.<sup>36</sup> Besides this, Latin American Ombudsmen often take on proactive work. For instance, all of them dedicate resources to education on human rights through various media channels.<sup>37</sup>

Latin American governments have responded with hostility. El Salvador provides one example of political interference. Following a period which saw some conflicts with the government, an Ombudsman was elected who fired staff and ignored his duties. An investigation later removed him, but the government then refused to elect another Ombudsman for another year. In the three years without a functional Ombudsman, important personnel had moved on to other jobs and the institution had lost the credibility it had established earlier.<sup>38</sup> In 2000, the Nicaraguan Ombudsman had its budget cut by 40%,<sup>39</sup> and the Guatemalan Ombudsman has said that his staff are often violently attacked by the police.<sup>40</sup>

These examples illustrate the variety of ways that a single institution can function in different contexts. The Swedish and Hawaiian Ombudsman, both lacking coercive power, set about investigating cases and making recommendations, and are generally successful in resolving the complaints. Latin American Ombudsmen, though similar in institutional structure, concern themselves more with broad human rights issues than individual complaints, and seek to resolve them through public advocacy rather than solely through investigation. While I will not attempt a comparative analysis, it is clear that these variations depend in some way on the environment in which the Ombudsman exists. In Sweden and Hawaii, the institutions and bureaucracies under investigation were often cooperative. Indeed, if they were not, the recommendations issued would hardly be enough to effect any change in behaviour. In Latin America, governments were often hostile to the Ombudsman. Consequently the Ombudsmen

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<sup>35</sup> Ibid., 439.

<sup>36</sup> Ibid., 437.

<sup>37</sup> Ibid., 443.

<sup>38</sup> Ibid., 434.

<sup>39</sup> “Democracy’s new battleground” *The Economist*, 16 Dec 2000 via Ugglä, 427.

<sup>40</sup> Ugglä, 437.

abandon their limited institutional powers to focus on their moral and public power as a “protector of the people”. The following table sums up some of the notable distinctions between these three examples:

	<b>Swedish Ombudsman</b>	<b>Hawaiian Ombudsman</b>	<b>Latin American Ombudsmen</b>
<b>Primary method of enforcement/influence</b>	Recommendations and resolutions	Recommendations and resolutions	Resolutions, "Appeal to Public Opinion" power"
<b>Legal powers available</b>	Operates as a public prosecutor; rarely used	None	Operates as a public prosecutor; rarely used
<b>Primary interaction with litigants through:</b>	Submission of signed complaint forms	Phone conversations	Submission of complaints; however, primarily focuses on mass-violations of human rights rather than individual complaints
<b>Relevant staff</b>	Primarily Ombudsman	Ombudsman in addition to several analysts who investigate complaints	Primarily Ombudsman

## The Ombudsman in Kerala

### A note on methodology

This case study is the product of a research trip to Kerala. From April 27<sup>th</sup> to May 5<sup>th</sup> 2010 I followed the Ombudsman around Kerala on his official duties. I was fortunate to observe five sittings: two in Kozhikode, one in Kannur, and two in Trivandrum. I also had the chance to interview the Ombudsman at length on two occasions, as well as speak with some of his staff and a number of complainants and advocates present at the sittings. I am indebted to Smitha T. Sujil Nivas, a law student in Kannur, and Mr. Gopakumar, an employee in the Ombudsman's office, both of whom assisted me greatly by translating between Malayalam and English.

Questions of critical analysis must fit within the scope of the available information. This study of the Kerala Ombudsman is a small one. I say this not to belittle what has been done but to recognize the limitations of any conclusions I can draw from my research. The Kerala Ombudsman has been working for ten years, and holds hundreds of sittings each year. Thousands of cases are received and resolved annually. In this context, my own experience with the Ombudsman is a very small sample size from which to draw firm conclusions.

However, even a limited study can provide new insights into an institution. Thus my analysis does not attempt to make broad judgments about the success or failure of the institution, but rather seeks to bring forth particularly interesting or relevant features.

### Evolution and basic features

The Ombudsman was created as a response to the increased power given to local self government institutions (LSGIs) by the Kerala Panchayati Raj Act of 1994 ('1994 Act'). In 2001 the Act was amended to include provisions for the Ombudsman. As one of the first Ombudsmen said in 2003:

“It did not take much time for the government to realize that corruption and corrupt practices started pervading the administration of LSGI. The government perforce had to introduce [the Ombudsman]... with the avowed objective of eradication of corruption, maladministration or irregularities in the discharge of administrative functions by LSGI.”<sup>41</sup>

Accordingly, the Kerala Ombudsman only considers cases relating to local self government institutions (LSGIs).<sup>42</sup> These include gram panchayats, block panchayats, district panchayats, municipalities and municipal corporations. Thus unlike the examples we discussed above, the Kerala Ombudsman does not concern itself with the higher reaches of administration. And because it is a state institution, it does

<sup>41</sup> Menon, KP Radhakrishna. “Annual Report of Ombudsman for LSGI (2002-2003)”, 1

<sup>42</sup> Kerala Panchayati Raj (amendment) Act 1999, Section 271, G1

not address national-level issues, like the Swedish or Latin American examples. This also makes it unique among comparable institutions in India. The Lokayukta, modelled on the Ombudsman but given little actual power, functions at the state level.<sup>43</sup> Restricted to LSGIs, the Ombudsman may investigate “any action involving corruption or maladministration or irregularities in the discharge of administrative functions.”<sup>44</sup>

Though this would seem to limit the Ombudsman’s jurisdiction substantially in comparison with other Ombudsmen, LSGI’s in Kerala have extensive responsibilities. The Panchayati Raj Act of 1994, in accordance with the 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendments, significantly decentralized power away from the state government and into the control of LSGIs. Local government institutions are responsible for most transportation infrastructure, sanitation and waste management, care of the disabled, the majority of poverty alleviation programs, education up to the higher-secondary level, and all welfare pensions.<sup>45</sup> Accordingly, they have access to significant funding – 40% of the total funds of the state exchequer are allotted to LSGIs.<sup>46</sup> Broadly, panchayats at various levels are responsible for a number of government services and development programmes. Thus the Kerala Ombudsman can investigate many of the same kinds of government services as Ombudsmen in other countries where such institutions would be handled by state or national government.

Before the establishment of the Office of Ombudsman in 2001, the Kerala Ombudsman was a panel of seven individuals out of which three “benches” were created,<sup>47</sup> each assigned to see cases from certain districts.<sup>48</sup> Initially all sittings were held in Thiruvananthapuram, though later sittings were held at various district headquarters.<sup>49</sup> In 2001, the state government abolished the seven member panel format by amending the Kerala Panchayati Act, and on December 26, 2001, KP Radhakrishna Menon was appointed as the first individual Ombudsman.<sup>50</sup> When asked, the current Ombudsman said that the cost of maintaining such a large body may have influenced the state government’s decision.<sup>51</sup>

Apart from these early changes, the institutional features of the Ombudsman have remained the same. Rather than elected, the Ombudsman is appointed by the Governor of Kerala for a term of three years.<sup>52</sup> Though the Governor is appointed by the President, he or she selects the Ombudsman on advice of the Chief Minister. The Ombudsman must be a former high court judge and is given the same salary as an acting high court judge.<sup>53</sup>

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<sup>43</sup> Rajagopal.

<sup>44</sup> Kerala Panchayati Raj (amendment) Act 1999, Section 271, G1.

<sup>45</sup> Vijayanand, SM. “Kerala: A Case Study of Classical Democratic Decentralization” prepared for submission to the 13<sup>th</sup> Finance Commission. Kerala Institute of Local Administration (KILA). 2009: 25-26.

<sup>46</sup> Nair, Justice M. R. Hariharan “Annual report and delay statement of Ombudsman for LSGI (2007-2008)”, 2.

<sup>47</sup> These individuals were specified to be: a high court judge, two district judges, an additional chief Secretary to the government of Kerala, the chairman of the Kerala state electricity board, and two professors

<sup>48</sup> “Ombudsman for LSGI First Annual Report” 2002, 1-3

<sup>49</sup> Ibid., 7.

<sup>50</sup> Menon, Justice K.P. Radhakrishna “Annual Report of Ombudsman for LSGI (2002-2003)”, 5.

<sup>51</sup> Nair, Justice M.R. Hariharan. Email interview, July 2 2010.

<sup>52</sup> Kerala Panchayati Raj (amendment) Act 1999, Section 271 G4

<sup>53</sup> Kerala Panchayati Raj (amendment) Act 1999, Section 271 G2 & G5

In addition to the Ombudsman, several staff members handle administrative issues. A Secretary receives complaints and presents them to the Ombudsman, as well as mailing the Ombudsman's orders. Other staff members assist during the Ombudsman's sittings and oversee the office's files.

In the course of resolving complaints the Ombudsman must often order investigations to uncover or confirm the facts of a case, and after a case is resolved, investigations verify that the Ombudsman's orders are being implemented. However, the Ombudsman lacks an independent investigative staff. When an investigation is required, the Ombudsman must order an outside party to carry it out. In most cases this is a state employee - the Deputy Director of Panchayats (DDP) or Assistant Deputy Director of Panchayats (ADDP).<sup>54</sup> One of these two individuals is usually present for each monthly sitting dedicated to their district, since they will be there to submit reports ordered by the Ombudsman and to receive new orders.

When I asked the Ombudsman about cooperation from the DDPs and ADDPs, he said "I would not say that they are 'very cooperative'... but they can be made to comply" and "most times the threat [of legal action] is sufficient."<sup>55</sup> The Ombudsman is also legally able to compel the police to assist in investigations, but it seems this rarely happens. When I asked the Secretary about this, he said that the police do not like to work for the Ombudsman. "They have their own arena of working" he said, "under control of [the police department] they have more freedom than when they work for someone else."<sup>56</sup>

The Ombudsman has extensive legal powers. If there has been a "loss or inconvenience" to a citizen, he may order an LSGI to compensate them, and may require that compensation be paid from the salary of the person responsible for the incident.<sup>57</sup> Likewise if there is loss to the LSGI itself, the Ombudsman may order the individual responsible to compensate them.<sup>58</sup> If the incident is simply the result of a mistake or inaction, the Ombudsman may order the LSGI to resolve the situation through appropriate measures.<sup>59</sup> If the case involves profit by corruption, the Ombudsman may also order penalties in addition to any compensation.<sup>60</sup>

The Act also contains provisions that aim to prevent corruption of the institution. All Ombudsmen must be former high court judges – individuals presumed to be of trustworthy stature. Ombudsmen can only serve for a single 3 year term, and afterwards they are ineligible to hold any government office or any position in a "corporation, company, society or university" controlled by the government of Kerala.<sup>61</sup> The rationale being that if the Ombudsman is ineligible to run again or hold any government job, there is less incentive for the Ombudsman to behave in a way that benefits the state at the expense of the citizen.

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<sup>54</sup> The DDP or ADDP have been used in this capacity since 2001.

<sup>55</sup> Nair, Justice M.R. Hariharan Personal interview, May 4 2010.

<sup>56</sup> Mr. Jawahar, Secretary to the Ombudsman. Personal interview, May 4 2010.

<sup>57</sup> Kerala Panchayati Raj (amendment) Act 1999, Section 271 J1 iii b

<sup>58</sup> Ibid. & Ibid., Section 271 K3

<sup>59</sup> Ibid.

<sup>60</sup> Ibid., Section 271 J3

<sup>61</sup> Ibid., Section 271 G6

## Accessing the Ombudsman

In order for a citizen to access the Ombudsman they must first be aware of it. One important source of information are local newspapers which often run articles describing a local case that has been resolved, or providing an account of a sitting held in a nearby city.<sup>62</sup> Furthermore, because it has been functioning since 2001 most LSGI's are aware of the institution of the Ombudsman through their interactions with it, and so can refer citizens to it when they file complaints.<sup>63</sup> Awareness of the Ombudsman may also spread in a more informal fashion. In 2009, the Ombudsman wrote in his annual report that "our experience is that the larger the disposals, the more are the complaints because news about the efficacy of the system spreads by word of mouth."<sup>64</sup>

A complaint must be submitted on a designated form, available in Malayalam through local panchayats and on the Ombudsman's website. The form is currently being updated to make it easier for citizens to understand.<sup>65</sup> Submission of a complaint requires a Rs. 10 fee.<sup>66</sup> To be submitted the form must reach either the Ombudsman or his Secretary. It can be mailed or delivered in person to their office, it can be submitted to the Ombudsman at one of his various sittings around the state, and as of recently, it can now be submitted online through the Ombudsman's website.<sup>67</sup> When a complaint is submitted in person, the complainant will often also take the time to explain his case to the Ombudsman or Secretary. I witnessed this myself on two occasions.<sup>68</sup>

The only data available on complaint submissions to the Kerala Ombudsman is contained in the office's annual reports. They show that the number of complaints submitted has remained fairly consistent – around 1100 each year – though there was a large jump in 2008-2009 to 1400.<sup>69</sup> However, examining the number of cases relative to population within each district, it seems that people in rural districts submit complaints less often than those in urban centres close to the Ombudsman's sittings. This suggests that travel distance may play a role in discouraging the use of the Ombudsman institution.<sup>70</sup>

There is no data that shows which segments of society most often use the Ombudsman. However, everyone I spoke to said that it was primarily used by the poor, and that many of the complainants were illiterate. The first Ombudsman, KPR Menon, observed in 2003 that in his experience as Ombudsman Adivasis and Scheduled Castes/Tribes frequently brought complaints, and seemed to be

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<sup>62</sup> Mr. Jawaharl, Secretary to the Ombudsman. Personal interview, May 4 2010.

<sup>63</sup> Many of the complainants I spoke with said they had first complained to their panchayat, who turned away the complaint and suggested they approach the Ombudsman instead.

<sup>64</sup> Nair, Justice M.R. Hariharan, "Ombudsman for LSGI Thiruvananthapuram Annual Report for the year 2008-2009", iii

<sup>65</sup> Mr. Jawaharl, Secretary to the Ombudsman. Personal interview, May 4 2010

<sup>66</sup> As per the Rule 11 of the rules made Under Section 271 J of the Kerala Panchayat Raj (Amendment) Act, 1999. <http://www.kerala.gov.in/grievanceredressal/ombudsman.htm#appli> visited on August 5 2010

<sup>67</sup> Nair, Justice M.R. Hariharan. Personal interview, April 28 & May 4 2010.

<sup>68</sup> Office of the Ombudsman. Personal observation, May 4 & 5 2010.

<sup>69</sup> Annual reports: 2001, 2002-2003, 2004-2005, 2005-2006, 2007-2008, 2008-2009. The annual report for 2003-2004 could not be provided as there are no known copies remaining.

<sup>70</sup> See Appendix 1.

<sup>71</sup> Menon, K.P. Radhakrishna, "Annual report of Ombudsman for LSGI for the period from 1.4.2002 to 31.3.2003," 2

disproportionally affected by corruption.<sup>71</sup>

Once a complaint is submitted, the Secretary is the first person to begin processing a complaint. His role is purely administrative – he checks to ensure the form is complete and the Rs 10 fee is attached.<sup>72</sup> The secretary told me that he will occasionally correct an incomplete application or pay the missing fee rather than turn away a complaint.<sup>73</sup> In explanation he said that many of the complainants are poor, illiterate, or both, and simply fixing the mistake reduces unnecessary delays.<sup>74</sup> The complaint forms and accompanying relevant documents are then bundled into a folder by the office staff, given an OP number (original petition), and passed on to the Ombudsman.

Only the Ombudsman is able to determine whether a complaint is within his/her jurisdiction.<sup>75</sup> In addition to the requirements outlined above, there are a few other specific limits. He may not investigate any case on which the government has already ordered a public inquiry.<sup>76</sup> He cannot investigate matters that already have prescribed solutions available from a LSGI tribunal, any matter already before another court, or any matter on which the complaint was filed 3 years after the events concerned.<sup>77</sup> If the Ombudsman deems a complaint to be urgent he may consider it before complaints that are less urgent but were received far earlier.<sup>78</sup> What is and is not urgent is up to the Ombudsman's discretion.

At this point there are two options. If the complaint has a readily apparent solution, the Ombudsman may immediately pass an order to the relevant LSGI and notify both parties. This the Ombudsman calls “solved on first posting”. If the complaint does not have an obvious solution, notice is issued to both parties to attend a sitting on a certain date.

## The Ombudsman's Sittings

Sittings are the primary platform through which the Ombudsman interacts with the public and resolves cases. They are essentially a court, albeit one where some rules of procedure are altered and the Ombudsman takes the place of the judge.

Sittings are held in various cities throughout Kerala according to a repeating monthly schedule. For instance, each month this year the Ombudsman spends the first two weeks in Trivandrum, during which time there will be around seven sittings held at the Ombudsman's offices, each designated for a nearby district. The third week is spent travelling and holding sittings in Thrissur and Ernakalum, and the fourth week is spent in Kozhikode, holding three sittings for nearby districts. Finally, one sitting is held in Kannur dedicated to all northern districts.<sup>79</sup> It should be noted that though sittings are held in various cities across the state, some complainants must often travel great distances to attend them. In 2005, the

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<sup>72</sup> Nair, Justice M.R. Hariharan. Personal interview, April 28 & Mr. Jawaharl. Personal interview, May 4 2010.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Nair, Justice M.R. Hariharan. Personal interview, April 28 & Mr. Jawaharl. Personal interview, May 4 2010.

<sup>76</sup> Kerala Panchayati Raj (amendment) Act 1999, Section 271 M4

<sup>77</sup> Ibid.

<sup>78</sup> Nair, Justice M.R. Hariharan. Personal interview, April 28 2010.

<sup>79</sup> Nair, Justice M.R. Hariharan. Personal interview, April 28 2010 & email correspondence, May 19 2010.

Ombudsman noted this problem when he wrote “It is true that the very poor people especially from the remote areas of Kasaragod, Wayanad and Palakkad districts cannot participate in the proceedings coming to these centres, it will be helpful for them to have separate sittings in those districts. But their demand cannot be heeded to because of the shortage of staff.”<sup>80</sup> Since many cases require multiple hearings, this may impose a significant cost – both for travel and for lost income while attending sittings.

Hearings in Trivandrum are held at the Ombudsman’s office on Barton Hill, in a small room with a raised platform for the Ombudsman to sit at a large desk. About 20 people in addition to the Ombudsman and his staff can fit in the room. As early as 2002 the Ombudsman had appealed to the government to arrange for an office at a more accessible location with better facilities for holding sittings.<sup>81</sup> The requests have not been acted on, however, and the Ombudsman remains in the same location. When elsewhere in Kerala, the hearings are usually held at the District Collectorate offices or District Panchayat offices. The hearings I attended in Kozhikode and Kannur were held in the conference hall of the district collector, which fit approximately 60-70 people.

A sitting usually begins at 10:30 AM. When the Ombudsman arrives he is escorted in by a police officer, and everyone present stands and waits for him to be seated at a large raised desk at the front of the venue before seating themselves. A court officer and typist, who have already brought in the case folders and set up a computer to record the orders, begin by announcing the first case and calling forward the concerned parties.<sup>82</sup>

What follows is superficially similar to a court proceeding. The parties to a case are called forward and stand before the Ombudsman who reviews the case file passed to him by his court officer. He asks questions and the parties explain their case to the Ombudsman. Advocates must seek permission from the Ombudsman before appearing at a sitting, though they were present at every sitting I attended. Although there is no set formula for how the Ombudsman interacts with the parties and proceeds with the case, each hearing can end in one of three ways.

First, a case may be dismissed if the Ombudsman determines it is vexatious or baseless, if the complainant decides to withdraw his or her complaint, or if the Ombudsman rules that it would be better taken up by another authority.<sup>83</sup>

Second, a case may be extended to another sitting. There are numerous reasons this might occur. The Ombudsman may order further investigation, in which case the findings will be reported at the next sitting. For example, a complaint about faulty construction of outhouses by the panchayat will require an investigation that determines the state of the outhouses.<sup>84</sup> Or, a case may rest on the ruling of a separate body. For example, a case about whether or not a panchayat should revoke a license for a pig farm may rest on the determinations of a local pollution control board, which may require the case to

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<sup>80</sup> Das, Justice T.K. Chandrasekhara, “Annual report of Ombudsman for LSGI (2004-2005),” 9

<sup>81</sup> “Ombudsman for LSGI first annual report” 2002, 3

<sup>82</sup> All observations of hearings in Kozhikode (April 28, 29), Kannur (April 30) and Thiruvananthapuram (May 4-6)

<sup>83</sup> Kerala Panchayati Raj (amendment) Act 1999, Section 271 N1

<sup>84</sup> I observed this case in Kozhikode on April 28 2010.

be postponed until after that board has met.<sup>85</sup> Third, the Ombudsman may pass an order intending to resolve a case, but still schedule another hearing to determine whether or not the parties concerned followed the order. For example, if the Ombudsman decides by the end of a case that the construction of a wall was in violation of panchayat building codes, he may order that the wall be removed. At the same time, he may simultaneously order an investigation which will determine whether this order is completed within four weeks. The Ombudsman will then schedule another sitting after that four week period, at which time the report will be presented to him which confirms that his orders have been carried out.

Lastly, a case may be resolved. As described above, a case is usually only completely concluded – that is, it will not have any more scheduled hearings – once it has been verified that the Ombudsman’s orders are being followed.<sup>86</sup>

## Cases and Complaints

Hearing an individual case usually takes between 5 and 10 minutes. Occasionally a case is tossed out quickly, which might take less than a minute, and sometimes the Ombudsman may entertain a case for up to half an hour. Frequently the complainants and respondents argue directly with the Ombudsman, sometimes quite forcefully.<sup>87</sup> The Ombudsman hears cases each day from 10:30 – 1:00 and 2:00 – 4:00. In this four and a half hour period around 40 cases are heard, and on average 10 of those cases might be resolved or dismissed, and the remaining cases are scheduled for another hearing at a later date.<sup>88</sup>

The Ombudsman sees a wide variety of complaints. At the sittings I attended, I saw cases regarding access to drinking water, non-payment of wages, construction of public toilets, land encroachment, unlawful construction, false entries in NREGA muster rolls, the allocation of houses designated for the poor, pollution from various industries, and the behaviour of commissions under control of a panchayat.<sup>89</sup>

Examples may be helpful in illustrating what we have discussed so far regarding the Ombudsman’s redressal process. Saraswathi is a middle aged woman from Trivandrum district. A neighbour built a septic tank near her family’s drinking well, and she is worried that it is polluting her water and wants the tank moved. At first she approached the panchayat with her complaint, but they did not respond to her concerns. In November 2009 she filed a case against the panchayat for not enforcing building standards – by law the septic tank must be five metres away from the well, whereas this tank is much closer. At the first sitting, the Ombudsman heard both sides of the case and then ordered an investigation. At the second sitting – the day on which I spoke to her – the director of panchayats was

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<sup>85</sup> The Ombudsman provided me with this example on May 4 2010.

<sup>86</sup> Nair, Justice M.R. Hariharan. Personal interview, April 28 2010.

<sup>87</sup> I observed this at least once at every hearing I attended.

<sup>88</sup> Ibid.

<sup>89</sup> Observations April 28, 29, 30 and May 4, 5, 6.

<sup>90</sup> Ms. Saraswathi & Mr. Gopakumar. Personal interview, May 5 2010. Unfortunately I did not have a translator later in the day, and so do not know how this case turned out.

scheduled to present his report stating the outcome of the investigation. When I asked about the long delay between sittings – only two since November 2009 – Mr. Gopakumar of the Ombudsman’s office said that it is caused by the lack of an independent investigative team. The DDP’s take a long time to conduct investigations, and the case must wait on them.<sup>90</sup>

Another complaint submitted by Mr. Jaya Chandoom and his wife dealt with a rather complicated family conflict. Mr Chandoom is a soldier and is often away in Kashmir. In his absence, one of his wife’s uncles had been living in the family home illegally. With her husband often gone, she expressed that she felt powerless to remove her uncle. Eventually the uncle acquired a certificate of ownership for the house, at which point the husband and wife filed a complaint against the panchayat for providing this certificate illegally. The case was filed in 2008, and when I spoke to them it was the 10<sup>th</sup> hearing of the case. When I asked why they believed the case had dragged on so long, they offered two explanations. First, they claimed that the uncle had used political influence to persuade the panchayat to fight the case on his behalf. Secondly, they said that the panchayat had continually introduced new evidence, and each time this was done the Ombudsman had to issue an investigation to confirm or deny the facts of the case.<sup>91</sup>

The Ombudsman’s annual reports contain copies of orders from notable cases. In a case first filed in 2005, the petitioner alleged that there had been irregularities in the construction of a road. A gram sabha committee approved the work and paid the contractor even after local people had pointed out several obvious defects in the road. After hearing the case, the Ombudsman requested that the Finance department investigate the issue. They found that the contractor had been overpaid Rs 17,079. An investigation of the work itself found that there was little actual cement in the cement mix. In March of 2007, the Ombudsman ordered the Ranni-Angadi Panchayat to recover the money from the contractor, and if this was not done, the panchayat should begin “Revenue Recovery” proceedings against them.<sup>92</sup>

Not all cases were so complex. In a case I witnessed in Kozhikode, a family complained that the panchayat had not properly maintained their water pipes. After a few minutes, the Ombudsman wrote an order requiring the panchayat to fix the pipes within a month, after which an investigation would determine whether this had been done.<sup>93</sup> Many other cases dealt with similarly simple questions and were settled with similarly simple orders.

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<sup>91</sup> Mr. Jaya Chandoom & Ms. Chandoom. Personal interview, May 6 2010.

<sup>92</sup> Das, Justice T.K. Chandrasekhara. “Annual report and delay statement of Ombudsman for LSGI (2006-2007),” 13

<sup>93</sup> Kozhikode. Personal observations, April 28 2010.

## ANALYSIS

### 1. Concentration of power

The Kerala Ombudsman is characterized by extraordinary power – both in the nature of the power given to the institution, and the extent to which it is concentrated in a single individual. The Ombudsman has extensive legal powers. He can order investigations, compel parties to attend a sitting, and issue binding legal orders.<sup>94</sup> Since the seven member panel was abolished, the single Ombudsman has direct control over every stage of the grievance redressal process. He decides which cases are within jurisdiction, which are to be prioritized, and which are seen on what date.<sup>95</sup> He hears evidence and orders investigations and weighs the evidence of those investigations.<sup>96</sup> He decides when and how a case is concluded.<sup>97</sup> The corollary of this is that no other individual in the Ombudsman's office has significant power over any part of the redressal process. The secretary and other staff are given purely administrative duties. They do not help fashion solutions, coordinate investigations, or gather details of the case from complainants. All of this is done by the Ombudsman, primarily during sittings.<sup>98</sup>

Among Ombudsmen, this is unique. Most foreign examples, as we discussed above, do not give such extensive legal powers to the Ombudsman. Acting as a public prosecutor they may initiate prosecution based on their findings, but the matter is then settled by a separate court. However, in comparison to other Indian legal institutions this concentration of power is less remarkable. The Ombudsman is always, after all, a former high court judge. Because India does not use a jury system, individual judges at all levels frequently have extensive legal powers comparable to the Kerala Ombudsman.

This has positive and negative implications for second order accountability. Because a single individual controls nearly all aspects of the grievance redressal process, there is only one person who could be influenced to exert control over the institution. This may in fact make it easier to monitor the institution and detect undue influence. Monitoring a large bureaucracy is difficult because there are a multitude of actors with significant power, because the functioning of the institution is usually only known to those who work within it, and because many of an institution's functions take place in secret or at least in private. In the case of the Ombudsman, there is a single person who is central to every function of the institution, and most of his actions are done publicly during sittings.

The other staff in the Ombudsman's office do not have enough individual power to control or damage the institution. Bribing or corrupting the Secretary would be hardly useful since they handle purely administrative tasks. A Secretary could refuse to pass on certain complaints, but since they can also be submitted to the Ombudsman, this would have little effect. A corrupt administrative officer could alter

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<sup>94</sup> Section 271K Kerala Panchayati Raj (amendment) Act 1999.

<sup>95</sup> *Ibid.*, Section 271 K, M, N & Q

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> The exception being cases that are solved on first posting, as such orders are not composed during a public sitting.

the details of a complaint file, but this would be found out easily enough during a sitting when the complainant is present addressing the Ombudsman about his case. The institutional staff of the Ombudsman are neither large nor powerful enough to insulate him from the individual complainants. Thus those concerned with monitoring the institution need only consider the Ombudsman, since only he or she could be usefully corrupted.

However, this concentration of authority also makes the Ombudsman vulnerable to abuse. Consider the El Salvador example, where the state appointed an Ombudsman who disregarded his duties. Were an Ombudsman like this appointed in Kerala, the results could be disastrous. The Ombudsman would be in a position of extraordinary power to use the office as he saw fit, without requiring the compliance of any other staff members who might oppose him. The only way to control such an Ombudsman would be to remove him in the manner proscribed by the KPR Act, which requires the assent of the Governor, a majority of the House, and two thirds of the legislative assembly. This is even more worrisome considering that there is little transparency in the appointment process. Legally the Governor appoints the Ombudsman, but concerns have also been raised about the appointment process having been influenced by political pressures.<sup>99</sup>

## 2. Dependency on outside investigation

The exception to the above analysis is the investigation process. The Ombudsman has no independent investigative staff. To investigate a case the Ombudsman must order a separate office – usually the Deputy Director of Panchayats – to conduct an investigation and present the findings at a sitting.

This is a weakness in capability, though one that the Ombudsman has long recognized and acknowledged. In the 2001 annual report, the Ombudsmen requested that an independent investigative team be supplied by the state government.<sup>100</sup> In 2008 the Ombudsman wrote “The absence of an investigative wing has crippled the functioning of the Ombudsman.”<sup>101</sup> The Ombudsman must rely on the Deputy Directors of Panchayats, who are not trained investigators, and who have many other duties besides carrying out the Ombudsman’s orders. The power to independently investigate cases is one of the great strengths of the Ombudsman system, and it is important that this capability is preserved and where possible improved. The Ombudsman continues to request funding for an investigative team.<sup>102</sup>

It is also a liability for second-order accountability and the effectiveness of the institution. The DDPs and ADDPs must have a close relationship with the panchayats because they work together. It is possible that some DDPs and ADDPs could thus believe that their interests lie closer to the panchayats than to the Ombudsman’s office, creating perverse incentives to protect the panchayats rather than investigate them fairly. If the Ombudsman is given a faulty report by a DDP it does not matter how

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<sup>99</sup> Nair, Justice M.R. Hariharan. Email interview, May 28 2010.

<sup>100</sup> “Ombudsman for LSGI first annual report” 2002, 13.

<sup>101</sup> Nair, Justice M.R. Hariharan. “Annual report and delay statement of Ombudsman for LSGI (2007-2008),” 2

<sup>102</sup> Nair, Justice M.R. Hariharan. Personal interview, May 4 2010.

impartial or accountable the Ombudsman may be. It would be far easier to ensure the competence and impartiality of a small investigative team overseen by the Ombudsman rather than a number of DDPs from districts across the state.

### **3. Limited jurisdiction**

The Ombudsman's limited jurisdiction may reduce the potential for conflict with the government. Other Ombudsmen are funded by the state and then given review over all government activities, including the government bodies which support it financially. This creates an implicit conflict of interest. As we saw in the Latin American examples this can lead to hostility and interference.

But because the Kerala Ombudsman is limited to LSGIs it does not have review over the government bodies that have direct control over it. The state legislative assembly passes the Ombudsman's budget and the centrally appointed Governor appoints the Ombudsman on advice from the Chief Minister. The Ombudsman does not have the power to investigate complaints against any of these people or bodies.

This may reduce the potential for conflict, but it does not remove it. The political parties that form the elected panchayat representatives are often the same political parties that sit in the Legislative Assembly. It is plausible that the interests of the party as to its activities in a certain panchayat may provide an incentive for party members in the legislative assembly to vote one way or another on matters relating to the Ombudsman.

### **4. Public hearings and accountability**

Public hearings may contribute to the accountability and legitimacy of the institution. While requiring a hearing for every stage of the case can be ponderous – presentation of the complaint, submitting evidence, considering investigative reports, etc – it also ensures that all procedures of the Ombudsman are done in full view of the public. Litigants who are unaware of the rules of legal procedure are able to directly question the Ombudsman about their case, rather than having to work through intermediaries or remain mystified by the Ombudsman's decisions. More research may be needed to ascertain how personal and public interaction between litigants and the Ombudsman affect the perception and reality of accountability.

## CONCLUSIONS

The Kerala Ombudsman has been used by thousands of citizens to resolve their complaints. In comparison to a formal court it is cheap, accessible, and expeditious. The Ombudsman verifies that its orders are being carried out and that the substance of the grievance has actually been addressed. This much is clear from a casual investigation of the institution. Upon more examination, there are particular features that contribute other strengths and weaknesses. The Ombudsman, in comparison to those in other countries, wields extensive power. However at the same time the Ombudsman must rely on outside assistance to carry out investigations, weakening his control over the function of his office. Drawing from the experiences of the Kerala Ombudsman, any future Ombudsmen in India that hope to be effective must have the following features:

1. Strong investigative capacity. Investigations reveal the facts of a case so that the Ombudsman may resolve it, and investigations confirm that subsequent orders are actually carried out. An Ombudsman institution without any investigative capability will necessarily struggle to accomplish its goals. The lack of a dedicated team has been a significant drawback of the Kerala Ombudsman. Relying on DDPs and ADDPs is not an ideal situation. Using such outside help reduces the ability of the Ombudsman to ensure he is receiving accurate reports, and it creates delays for litigants who have to wait for the DDP or ADDP to get around to the next investigation while also performing their regular duties. It is tempting to push the burden of investigation onto already existing positions – because it does not require additional paid staff – but the quality of investigation suffers, which lessens the quality of the Ombudsman’s service. Future Ombudsmen should be provided with the budget to hire a dedicated investigative team.
2. Open and transparent appointment procedures. A single Ombudsman wielding considerable legal powers is inherently susceptible to abuse. Any Ombudsman institution which places an individual at the center of all aspects of the grievance redressal process must consider how this affects accountability. If the single Ombudsman model is to be used in the future, appointment procedures should be open and transparent to reduce the possibility that the institution’s powers will ever be abused.
3. Accessibility. An institution that requires complainants to attend hearings in person must make every effort to be locally available. This is even more true for an institution that aims to serve the poor, who are most disadvantaged by missing days of work and travelling long distances. Currently, the Kerala Ombudsman holds sittings in many cities, but many must still take long trips to attend sittings, and in many cases they must make the same trip several times over a period of many months. Future Ombudsmen should aim to mitigate this problem by holding sittings as widely as possible within their jurisdiction.

Lastly, it is unfortunately clear that the success or failure of any Ombudsman depends largely on the government’s willingness to respond to its demands and fund its office. The Kerala Ombudsman has requested funding for an investigative team for eight years and has always been denied. The Kerala

Ombudsman has requested an office at a more accessible location for eight years, and remains in the same location. Multiple annual reports have lamented that the state government seems completely oblivious to their requests and suggestions.<sup>103</sup> For the Kerala Ombudsman to be improved, and for any other Ombudsman to succeed, government offices must themselves be accessible, responsive, and accountable to the institutions that depend on them.

## References

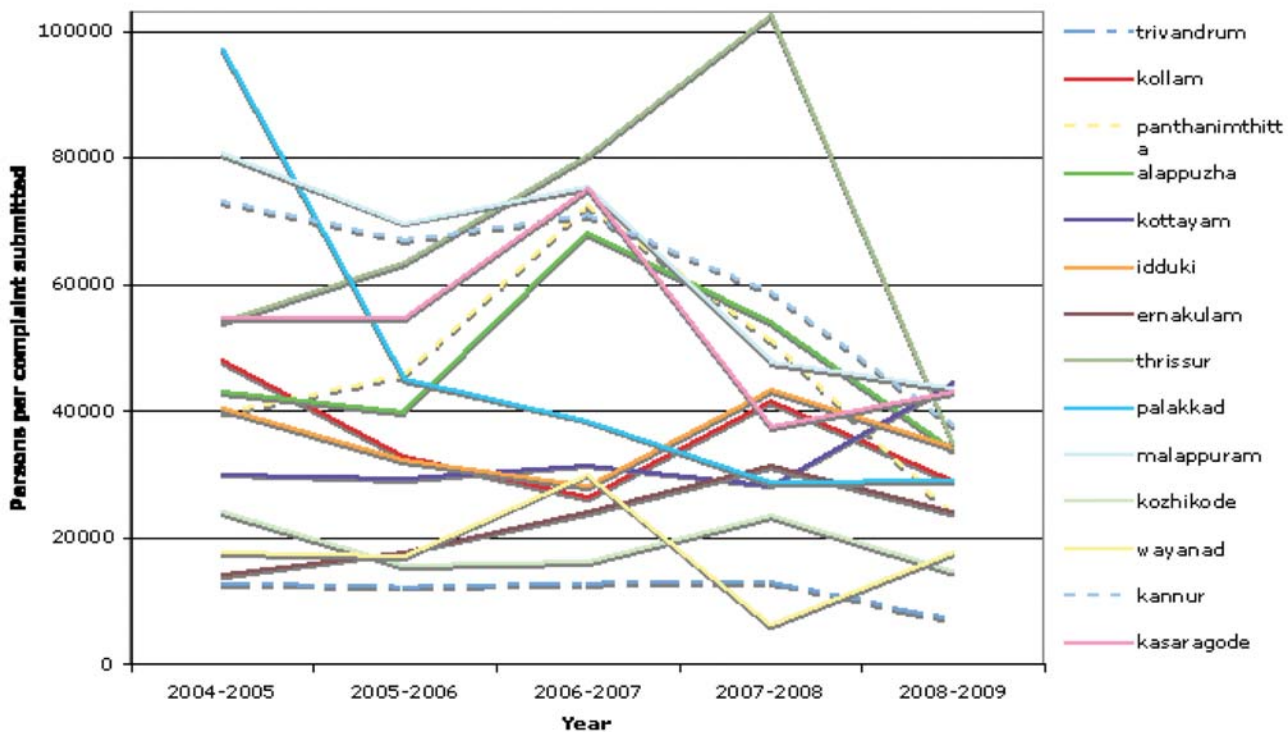
- Das, Justice T.K. Chandrasekhara “Annual report of Ombudsman for LSGI (2004-2005)”
- “Annual report of Ombudsman for LSGI (2005-2006)”
- ”Annual report and delay statement of Ombudsman for LSGI (2005-2006)”
- Galanter, Marc. *Law and Society in Modern India*. Delhi: Oxford University Press, 1989. 75.
- Hill, Larry B. “The Ombudsman Revisited: Thirty Years of Hawaiian Experience” *Public Administration Review* vol 62(1) 2002: 24-41, 24
- Jagerskiold, Stig. “The Swedish Ombudsman,” *University of Pennsylvania Law Review* Vol. 109 (8) 1961: 1078
- Mr. Jawaharl, Secretary to the Ombudsman. Personal interview, May 4 2010.
- Kerala Panchayati Raj (amendment) Act 1999
- Menon, Justice K.P. Radhakrishna, “Annual Report of Ombudsman for LSGI (2002-2003)”, 5.
- Mohammed, Shri. Justice P.A. “Ombudsman for LSGI First Annual Report” 2002, 1-3
- Nair, Justice M. R. Hariharan. “Annual report and delay statement of Ombudsman for LSGI (2007-2008)”
- ”Ombudsman for LSGI Thiruvananthapuram Annual report (2008-2009)”
- Personal interview. April 28 and May 4 2010.
- Email interview, May 19, 28 and July 2 2010.
- Ombudsmen – History of the Office. Office of the Ombudsman (NZ). Web. 10 May 2010 <<http://www.ombudsmen.parliament.nz/index.php?CID=100014>>
- Rosenthal, Albert H. “The Ombudsman – Swedish ‘Grievance Man’” *Public Administration Review* vol 24(4) 1964: 226-230, 228.
- Sharma, Amita. Joint Secretary (NREGA). “Ombudsman Instructions” Sept 7, 2009. 11.
- Uggla, Frank. “The Ombudsman in Latin America.” *Journal of Latin American Studies* vol 36(3) 2004: 423-450, 428
- Vijayanand, SM. “Kerala: A Case Study of Classical Democratic Decentralization” prepared for submission to the 13<sup>th</sup> Finance Commission. Kerala Institute of Local Administration (KILA). 2009: 25-26.
- What is an Ombudsman? Forum of Canadian Ombudsman. Web. 10 May 2010 <[http://www.ombudsmanforum.ca/whatis\\_e.asp](http://www.ombudsmanforum.ca/whatis_e.asp)>

## Appendix 1 – Data

The only data on the use of the Ombudsman is recorded in the Ombudsman’s annual reports. However, the data is recorded inconsistently. The first annual report only contains the total number of cases submitted and the total number disposed. The second annual report states in detail the number of cases considered and disposed at every hearing date, along with the totals, but does not include the number of cases per district. The third annual report is unavailable, as there are no known copies. Since the fourth annual report (2004-2005), the Ombudsman has consistently recorded the number of cases per district, along with the totals.

Cases	Time period							
	2000-2001	2002-2003	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009
Submitted	2344	1213	NA	1068	1155	1038	1050	1454
Pending	0	-	NA	622	836	902	969	881
Disposed	799	1118	NA	1206	1115	971	926	1199

**Complaint Density by District**



The above chart shows the complaint density for each district in Kerala since 2004. The vertical axis measures the number of persons per complaint – a higher number signifying a lower ratio of complaints to people, and a lower number indicating that there are more complaints per person in that district. Trivandrum has usually had the greatest number of complaints for its population, followed by Wayanad, Kozhikode and Ernakulam. That three out of the four of these are more urban districts is perhaps not surprising when we consider that they are also places where the sittings are held. It is far easier for an individual in Trivandrum to access the Ombudsman than someone in Malappuram, and so we might expect a greater density of complaints from these places. This graph also reveals some interesting trends. Kasaragode, Alappuzha, Panthanamthitta, Malappuram and Wayanad all dropped in 2006-2007. While this is a strange coincidence, it must be noted that the difference in absolute number of cases is very small. Allappuzha's drop in complaint density is due to 10 less cases being submitted that year than in 2005-2006. As a whole, however, the graph shows us that all of Kerala's districts are submitting more complaints per person than they were in 2004-2005, although many rural districts still lag a little behind. It is unclear whether this signifies greater awareness of the institution or greater levels of corruption, incompetence and indifference within LSGIs.



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