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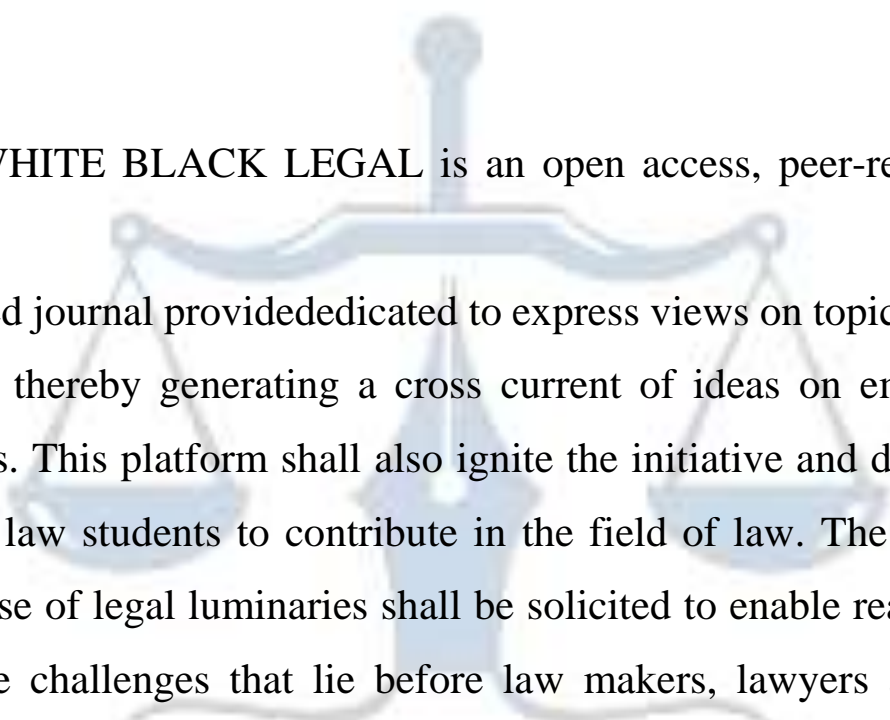


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With this thought, we hereby present to you

# **EVALUATING THE CONSTITUTIONALITY OF RESTRICTIONS ON LEGAL REPRESENTATION BEFORE QUASI-JUDICIAL BODIES: A CRITICAL ANALYSIS OF THE BANKING OMBUDSMAN FRAMEWORK IN INDIA**

AUTHORED BY - MITUNA S<sup>1</sup>

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## **ABSTRACT**

*This article seeks to analyse the constitutionality of Section 3(1)(c) and 10(2)(f) of the Reserve Bank Integrated Ombudsman Scheme, 2021 which expressly bars advocates from representing before the Ombudsman. It critically analyses these restrictions in light of Article 19(1)(g) of the Constitution of India and Section 30 of the Advocates Act, 1961, which collectively safeguard the advocate's right to practice before all courts and tribunals in India. Through a detailed review of relevant judicial precedents, including the recent decision of the Madras High Court in the case of N.A. Srinivasan v. The Deputy Governor, RBI and Others<sup>2</sup>, this study assesses the implications of prohibiting legal representation in adjudicatory processes. It argues that such exclusions undermine the principles of natural justice and legal fairness, particularly in contexts involving complex legal and financial matters. The paper contends that the complete prohibition of advocates from appearing before the ombudsman contravenes established constitutional and statutory protections, and the author recommends a re-evaluation of these provisions to ensure compliance with the principles of natural justice, fundamental rights and procedural equity.*

**Key words:** *Right to counsel, RBI, quasi-judicial body, Ombudsman, right to practice.*

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<sup>2</sup> N.A.Srinivasan v. The Deputy Governor, RBI and Others, W.P.No. 9017 of 2022 (Madras High Court, 09/07/2024).

## I. INTRODUCTION

The Reserve Bank of India implemented the Reserve Bank - Integrated Ombudsman Scheme, 2021 [for brevity, hereinafter referred to as “RB-IOS”] on 12<sup>th</sup> November 2021, which integrates the three erstwhile Ombudsman Schemes namely (i) the Banking Ombudsman Scheme of 2006, (ii) the Ombudsman Scheme for Non-Banking Financial Companies of 2018, and (iii) the Ombudsman Scheme for Digital Transactions of 2019, into one Scheme with the view to launch an ‘One Nation, One Ombudsman’ system. The Scheme allows customers of Regulated Entities, such as banks, Non-Banking Financial Companies, Credit Information Companies, and Payment System Participants, to register their complaints at a single centralised reference point and to facilitate the settlement of those complaints; streamlining the grievance redress process at RBI.<sup>3</sup> This scheme provides the bank customers with an expeditious and inexpensive forum to resolve their complaints.

The introduction of new provisions in RB-IOS has set steps in the right direction, but reading the scheme shows that a certain restriction continues unchanged. This is regarding section **3(1)(c) and 10(2)(f) of RB-IOS** (hereinafter, referred as ‘the impugned provisions’) which is reproduced below.

Section 3(1)(c) of the Reserve Bank – Integrated Ombudsman Scheme, 2021, defines “Authorised Representative” as a person, *other than an advocate*, duly appointed and authorised in writing to represent the complainant in the proceedings before the Ombudsman. Similarly, section 10(2)(f) imposes such a bar by stating that ‘the complaint is lodged by the complainant personally or through an authorised representative *other than an advocate* unless the advocate is the aggrieved person’. The above provisions expressly and specifically bars advocates from representing complaints before the RBI Ombudsman. This article discusses about the constitutionality of this provision, to the extent of debarring the advocates, in light of article 19(1)(g) of the Indian Constitution and Section 30 of the Advocates Act, 1961 which guarantees the advocate’s right to practice in courts, tribunals, and other legal forums across India. Furthermore, as a quasi-judicial body, a banking ombudsman is required to uphold the principles of natural justice. The third part of this article will address the ‘right to counsel’ and examine how its denial undermines the validity of the impugned provisions.

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<sup>3</sup> Reserve Bank of India, FAQs on the Reserve Bank - Integrated Ombudsman Scheme, 2021, available at <https://www.rbi.org.in/commonperson/english/scripts/FAQs.aspx?Id=3407>, last seen on 15/09/2024.



The same issue of whether a person carrying a complaint before the RBI ombudsman can obtain legal assistance in such forum came up before the Madras High Court in the case of *M.Shreenivaas v. The Governor, RBI & others*<sup>4</sup> in 2014. The petitioners argued that the Ombudsman operates as an adjudicatory forum, and therefore, legal assistance from advocates should not be denied, especially considering that law officers of the bank are allowed to attend such proceedings. But this issue was not deliberated or concluded in the case.

However, recently, the Madras High Court in the case of *N.A.Srinivasan v. The Deputy Governor, RBI and Others*<sup>5</sup> (hereinafter, N.A.Srinivasan judgement) upheld the constitutionality of section 3(1)(c) and 10(2)(f) of RB-IOs by reasoning that the Ombudsman's function, being quasi-judicial in nature and focused on non-adversarial resolution of disputes, did not necessitate the presence of advocates. The Court further observed that the right to practice is merely a statutory right and not a fundamental right and Section 30 of the Advocates Act allows for restrictions where particular laws do not mandate the presence of legal counsel.

As of now, there does not seem to be any case in the Supreme Court of India specifically challenging the impugned provisions. However, it is important to review this recent judgment in relation to the broader context of the nature of Ombudsman, the requirement for legal representation and their intersection with constitutional rights. In this article, the author examines the judicial reasoning employed by the Court in N.A. Srinivasan judgement and then seeks to provide alternate reasoning which may possibly have resulted in a different conclusion.

## **II. ADVOCATE'S RIGHT TO PRACTICE AND QUASI-JUDICIAL BODIES**

This part is discussed under the following heads: (1) Whether RBI Ombudsman fall under the purview of Section 30(2) of the Advocates Act, 1961? And (2) Can a statutory provision be struck down for being ultra vires of Section 30(2) of the Advocates Act, 1961? The concerned section from the Advocates act is reproduced below.

*“30. Right of advocates to practice. - Subject to the provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practice throughout the territories to which this Act extends,-*

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<sup>4</sup> M.Shreenivaas v. The Governor, RBI & others, W.P.No.3450 of 2014 (Madras High Court, 09/02/2021).

<sup>5</sup> N.A.Srinivasan v. The Deputy Governor, RBI and Others, W.P.No. 9017 of 2022 (Madras High Court, 09/07/2024).

- (i) *in all courts including the Supreme Court;*
- (ii) *before any tribunal or person legally authorised to take evidence; and*
- (iii) *before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practice.”*

## **(2.1) WHETHER RBI OMBUDSMAN FALL UNDER THE PURVIEW OF SECTION 30(2) OF THE ADVOCATES ACT?**

According to section 30(2) of the advocates act, every advocate whose name is entered in the state roll is entitled the right to practice '*before any tribunal or person legally authorised to take evidence*'. The phrase 'legally authorised' denotes that the tribunal or person is authorised by a statute or statutory rules<sup>6</sup>, and the officer should have legal authority to summon witnesses and compel the production of documents<sup>7</sup>.

The N.A.Srinivasan judgement stated that the RBI ombudsman Scheme does not contemplate taking of evidence before the Ombudsman as it is only a non-adversarial adjudicator of disputes, a quasi-judicial authority and an Official, appointed to receive complaints, investigate and report on the complaints from private citizens about the Government or otherwise.

However, if we look into the adjudicatory processes of such quasi-judicial bodies, they are often clothed with the powers of Civil Courts, for the purpose of taking evidence, enforcing attendance, producing evidence, and therefore the denial of legal assistance to parties before such bodies warrants serious reconsideration.

The following provisions from the RB-IOS, 2021, outlining the adjudicatory process, support this assertion.

- (i) Procedure to file a *complaint* (Section 11);
- (ii) Forwarding a copy of the complaint to the Regulated Entity against whom the complaint is filed with a direction to submit its *written version* (Section 12(3));
- (iii) The Ombudsman is authorised to require the Regulated Entity to *provide any information or furnish certified copies of documents* related to the complaint, which are alleged to be in its possession (Section 13(1));

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<sup>6</sup> Zonal Manager, LIC v. City Munsif, Meerut & Anr., AIR 1968 ALL 270.

<sup>7</sup> Taj Pal Singh v. Desai (M.C.) & Ors., (1968) ILLJ 292 ALL.

- (iv) *Examination* of parties to the complaint by the Ombudsman, including *recording their statements* (Section 14(2));
- (v) Compliance with directions for the *production of evidence* and related documents within the stipulated time (Section 14(7));
- (vi) Proceeding *ex-parte* if the Regulated Entity fails to submit its written response and documents *within the stipulated time*, with the Ombudsman may pass an order based on the available evidence (Section 14(4));
- (vii) Ombudsman shall *pass an Award* in cases of non-furnishing of documents/information or unresolved matters based on the records, after affording both parties a reasonable opportunity to be heard (Section 15(1));
- (viii) The Award shall contain direction for specific performance by the Regulated Entity and, if applicable, compensation to be paid to the complainant for any loss suffered (Section 15(3)).

These provisions clearly show that an Ombudsman is legally authorised to take evidence and adjudicate dispute between parties based on it. Though the scheme provides that the Ombudsman shall endeavour to promote settlement of a complaint by agreement between the complainant and the Regulated Entity through facilitation or conciliation or mediation<sup>8</sup>, only 57.48% of maintainable complaints are settled by mutual agreement. This percentage has significantly declined compared to previous years.<sup>9</sup>

The nature of ombudsman and its adjudicatory process can be more precisely inferred from the following judgements. In *M.M. Kunjumon v. RBI*<sup>10</sup>, the Kerala High Court held that both the parties can produce any document and can adduce evidence, oral or documentary, to support their claims before the Ombudsman. After considering the rival arguments from both parties, the Ombudsman should pass a reasoned order addressing the various contentions raised during the proceedings. In *Fidelity Finance Ltd. v. Banking Ombudsman*<sup>11</sup>, the Madras High Court stated that the Ombudsman operates under a Scheme established through statutory authority and is required to perform quasi-judicial functions. The Court clarified that Ombudsman is obligated to act judicially and provide reasoned decisions as it holds the power to determine

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<sup>8</sup> S. 14(1), Reserve Bank - Integrated Ombudsman Scheme, 2021.

<sup>9</sup> Reserve Bank of India, RB-IOIS 2021 Annual Report for the Year April 1, 2022 to March 31, 2023 (2023), available at <https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/ANNUALREPORTRBIOS202223880A2251F72D44AFA102383229C19A18.PDF>, last seen on 14/09/2024.

<sup>10</sup> *M.M. Kunjumon v. RBI*, 2023 SCC OnLine Ker 7608.

<sup>11</sup> *Fidelity Finance Ltd. v. Banking Ombudsman*, 2002 SCC OnLine Mad 864.

matters affecting the rights of the parties involved.

If a Tribunal or a person is legally authorized to take evidence, there has been intrinsic right in the advocate to practise before such a Tribunal in view of Section 30 of the Advocates Act which cannot be taken away.<sup>12</sup> Therefore, it is concluded that the RBI Ombudsman fall under the purview of Section 30(2) of the Advocates Act, 1961, granting advocates an undeniable right to practice before this quasi-judicial body, subject only to the provisions of the Advocates Act.

## **(2.2) CAN A STATUTORY PROVISION BE STRUCK DOWN FOR BEING ULTRA VIRES OF SECTION 30 OF THE ADVOCATES ACT?**

There is yet no clear legal proposition as to whether the advocate's right to practice is merely a statutory right<sup>13</sup> or a fundamental right<sup>14</sup> under Article 19(1)(g) of the Constitution. Therefore, the legal position of the issue stated above can be inferred from a plethora of judgments addressing how courts have handled provisions that prohibit the representation of advocates before courts or tribunals. These cases clarify the judicial approach to such prohibitions, highlighting how these restrictions have been interpreted and resolved by the judiciary.

Before proceeding, it is pertinent to reference the case of *Aeltemesh Rein vs Union Of India & Ors.*,<sup>15</sup> which is relevant to the matter at hand. The Supreme Court, while issuing a writ of mandamus to the Central Government, directed it to consider enforcing Section 30 of the Advocates Act, 1961 within six months. It noted that once in force, advocates on the State roll will have the right to practice across all courts, tribunals, and authorities, despite existing laws restricting advocate representation in certain forums, such as Labour Courts and Family Courts. The Court emphasized the importance of legal assistance in complex legal matters, particularly for the weaker sections of society, and found no justification for delaying Section 30's enforcement. Pursuant to the said direction of the Hon'ble Apex Court rendered in the year 1988, Government of India have brought Section 30 of the Advocates Act in force only on 15.06.2011<sup>16</sup>, and therefore, advocates can practice as a matter of right in all Courts and

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<sup>12</sup> Paramjit Kumar Saroya and Ors v. Union of India & Ors., MANU/0765/2014.

<sup>13</sup> N.Ram Reddy v. Bar Council of the State of A.P., Hyd., AIR 2002 Andhra Pradesh 484.

<sup>14</sup> V.Senthil v. The Secretary of Bar Council of Tamil Nadu & Puducherry & Anr., WP No.31385 of 2019 and WMP Nos. 31551 and 31554 of 2019 (Madras High Court, 18/06/2024).

<sup>15</sup> Aeltemesh Rein v. Union of India & Ors, 1988 AIR 1768.

<sup>16</sup> Notification No. S.O. 1349(E), Gazette of India, Extraordinary, Part II, Section 3(ii), dated June 9, 2011 (published June 15, 2011).

Tribunals.

In addressing the question of whether a statutory provision can be struck down for being ultra vires of Section 30 of the Advocates Act, 1961, the Kerala High Court's judgment in *Adv. K.G. Suresh v. Union of India*<sup>17</sup> sets a good precedent. Similarly, the Punjab & Haryana High Court, in CWP 7282/2010 and CWP 12340/2010, and the case of Paramjit Kumar Saroya and Ors v. The Union of India & Ors<sup>18</sup>, ruled that Section 30 grants an absolute right to an Advocate to practice before all courts and tribunals, prevailing over Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which prohibited parties from being represented by legal practitioners in proceedings before a maintenance tribunal or appellate tribunal.

*“57. As Section 30 of the Advocates Act, 1961 has been brought into force from 15.06.2011, Advocates enrolled under the said Act have been conferred with an absolute right thereof, to practice before all the Courts and Tribunals. By virtue of Section 30 of the Advocates Act, 1961, coming into force from 15.06.2011, the restriction imposed is taken away and in such circumstances, Article 19 of the Constitution of India, which guarantees the freedom to practice any profession, enables the Advocates to appear before all the Courts and the Tribunals, subject to Section 34 of the Advocates Act, 1961. In the light of the above discussion and decisions, Section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is declared as ultra vires of Section 30 of the Advocates Act, 1961 and thus, the petitioner is entitled for a declaration that he has a right to represent the parties before the Tribunal/Appellate Tribunal/Court, constituted under Act 56 of 2007.”*<sup>19</sup>

The respondent's argument that the main object of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is to ensure a *speedy and cost-effective mechanism* to claim maintenance and that allowing participation of advocates would jeopardize this objective was rejected by the court. The Court held that legal representation would not delay the proceedings or the adjudication of a dispute before the Maintenance Tribunal and that denying legal assistance on the grounds of cost is invalid, as the Legal Services Authority can provide lawyers for those unable to afford them. Legal aid is a constitutional right under Article 21, and mere

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<sup>17</sup> Adv. K.G. Suresh v. Union of India, AIR 2021 Ker 152.

<sup>18</sup> Paramjit Kumar Saroya and Ors v. The Union of India & Ors, MANU/0765/2014.

<sup>19</sup> Adv. K.G. Suresh v. Union of India, AIR 2021 Ker 152.

legal advice is insufficient for justice.<sup>20</sup> Therefore, the Court's reasoning in the N.A. Srinivasan judgment, suggesting that the express bar on advocates in the impugned scheme have certain purpose and object considering the nature of the proceedings is inconsistent with the stance taken by other High Courts in this regard.

Several courts have examined the constitutionality of statutes that restrict the rights of advocates to practice. Currently, there is a lack of precedents specifically addressing the bar on legal representation imposed by the RBI ombudsman scheme. Consequently, the following relevant judgments are discussed to provide an insight. The Allahabad High Court<sup>21</sup> held that Section 36(4) of the Industrial Disputes Act is violative of Article 14 and 19(1)(g) of the Constitution of India, noting that barring legal representation for employers while allowing it for workmen was unreasonable and arbitrary; and is therefore, ultra vires and unconstitutional. The Court recognized that labour law requires specialized legal knowledge, and such restrictions were unjust. In a similar vein, the Madras High Court<sup>22</sup> in 2007 reinforced the principle that restrictions on legal representation violate Article 39A of the Constitution, which guarantees legal aid and representation at all levels.

Whereas, in *Lingappa Pochanna Appelwar v. State of Maharashtra*<sup>23</sup>, the Supreme Court upheld Section 9A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974, which barred advocates from representing parties in proceedings under the Act. This was justified by the fact that Section 30 of the Advocates Act, which would confer such a right, was not yet effective and therefore such restrictions are permissible and do not infringe on the fundamental rights under Article 19(1)(g) of the Constitution.

The three judge bench of the Supreme Court in *Paradip Port Trust v. Their workmen*<sup>24</sup> clarified that the general rights of advocates under the Advocates Act do not override specific statutory provisions like Section 36(4) of the Industrial Disputes Act, which requires consent from tribunals for advocates to appear. But, in *Hygienic Foods*<sup>25</sup>, the Supreme Court's Division Bench expressed a prima facie view that Section 36(4) of the Industrial Disputes Act is

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<sup>20</sup> Ibid.

<sup>21</sup> I.C.I. India Ltd. v. Presiding Officer, Labour Court and Ors., (1992 LLR 477).

<sup>22</sup> The Management Hindustan Motors v. The Presiding Officer, Principal, 2007 (2) CTC 31.

<sup>23</sup> Lingappa Pochanna Appelwar v. State of Maharashtra, (1985) 1 SCC 479.

<sup>24</sup> Paradip Port Trust v. Their workmen, 1977 SCR (1) 537.

<sup>25</sup> Hygienic Foods v. Jasbir Singh and Ors., 2011 (4) UJ 2149 (SC).

unconstitutional, potentially violating Articles 14 and 19(1)(g) of the Constitution. The aforementioned decisions are distinguishable from the issue in hand because the Act in question did not impose a complete and absolute prohibition on advocates' right to appear before the tribunal. Instead, the exclusion was limited and subject to the two conditions specified in Section 36(4) of the Industrial Disputes Act. This does not apply to the current issue, as the RB-IOI imposes a complete prohibition on advocates representing parties before the ombudsman, akin to the provisions discussed in the judgments below.

In *H.S. Srinivasa Raghavachar vs State Of Karnataka & Ors*<sup>26</sup>, the Supreme Court declared that Section 48(8) of Karnataka Land Reforms Act, 1962 is unconstitutional for prohibiting legal practitioners from appearing before land tribunals, ruling this restriction violated Section 30 of the Advocates Act. In *Smt. Jaswant Kaur v. State of Haryana*<sup>27</sup>, the High Court of Punjab and Haryana invalidated Section 20A of the Haryana Ceiling of Land Holdings Act, 1972, which prohibited advocates from representing parties before the authorities constituted under the Act as it was in contradiction with Section 30 of the Advocates Act, although the latter was not yet in force. Similarly, the Bombay High Court in *Mohan Madhukar Sudame*<sup>28</sup> case invalidated Section 64 of the Maharashtra Universities Act, 1994, which excluded legal practitioners from university tribunals, finding it contrary to Section 30 of the Advocates Act.

In light of the aforementioned judgments, it is evident that statutory provisions imposing absolute prohibitions on advocates' representation are likely to be struck down as ultra vires of Section 30 of the Advocates Act, 1961. This is because Section 30 confers a fundamental right for advocates to practice before all courts and tribunals, which supersedes restrictive statutory provisions that deny this right. Therefore, any law that wholly bars advocates from representing parties in specific forums, like the RB-IOI, must be scrutinized for its constitutionality in accordance with this fundamental right.

### III. RIGHT TO COUNSEL

*“[E]xperience has taught me that to deny persons who are unable to express themselves the services of a competent man is very mistaken kindness.”*<sup>29</sup>

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<sup>26</sup> *H.S. Srinivasa Raghavachar v. State Of Karnataka & Ors*, 1987 SCR (2)1189

<sup>27</sup> *Smt. Jaswant Kaur v. State of Haryana*, AIR 1977 P&H 221.

<sup>28</sup> *Mohan Madhukar Sudame v. State of Maharashtra*, AIR 2012 Bom 89.

<sup>29</sup> C.K. Allen, *Administrative Jurisdiction*, 79 (1<sup>st</sup> ed., 1956).

The right of an advocate to appear in proceedings and the right of a party to be represented by an advocate are interrelated but distinct. The key issue is whether an individual can claim the right to legal representation in adjudicatory proceedings as a matter of natural justice. Historically, there has been a tendency to exclude lawyers from administrative adjudication, with the rationale that such exclusion reduces costs, protects the economically disadvantaged from the wealthy, minimizes delays, and prevents proceedings from becoming overly formalized and technical.<sup>30</sup> However, the effectiveness of the right to be heard may be compromised if legal representation is denied, as not all individuals possess the skills to effectively present their own cases before an adjudicator.

### **(3.1) POSITION IN OTHER COUNTRIES**

In Australia, the appearance of advocates before tribunals is a rule, and non-appearance an exception.<sup>31</sup> In the United States, the right to legal representation is extensively protected under the combined effect of the “Due Process” Clause in the U.S. Constitution and Section 555(b) of the Administrative Procedure Act, 1946, which ensures that individuals compelled to appear before an agency or its representative have the right to be accompanied, represented, and advised by counsel. Additionally, parties have the entitlement to appear in person or be represented by counsel or any qualified representative in agency proceedings.

In the United Kingdom, the Franks Committee posited that the right to legal representation should be restricted only in the most exceptional circumstances where it is clear that the interests of the applicants would be better served by such a restriction.<sup>32</sup> However, initially, there was judicial divergence on this issue in England. In *Pett (1)*<sup>33</sup>, the Court unanimously affirmed the right to legal representation before a tribunal, especially where the matter affects an individual's reputation or livelihood and there is a right to an oral hearing. However, in *Pett (2)*<sup>34</sup>, the Court departed from this view. Further deliberation in the *Enderby case*<sup>35</sup> concluded that while there is no absolute right to legal representation, adjudicators should exercise discretion and permit legal representation in exceptional cases<sup>36</sup>. But the adjudicator **can't lay**

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<sup>30</sup> MP Jain & S Jain, *Principles of Administrative Law*, 348 (6<sup>th</sup> ed., 2010).

<sup>31</sup> Ernst Wilhelm, *Legal Representation Before Administrative Tribunals*, 43 ALJ 64 (1969).

<sup>32</sup> Para 87 of the Report.

<sup>33</sup> *Pett v. Greyhound Racing Ass.*, (1968) 2 WLR 1471.

<sup>34</sup> *Pett v. Greyhound Racing Ass.*, (1969) 2 All ER 221.

<sup>35</sup> *Enderby Town F.C. Ltd. v. Football Assn. Ltd.*, (1971) 1 All ER 215.

<sup>36</sup> See: *Frazer v. Mudge*, (1975) 3 All ER 78; *R. v. Race Relations Board ex p. Selverajan*, (1975) 1 WLR 1686; *Maynard v. Osmond*, (1977) QB 240.



**down an absolute rule against legal representation.**

### **(3.2) POSITION IN INDIA**

In India, the statutory positions on representation by advocates in tribunals/ quasi – judicial bodies can be divided as the following:

- i. Some statutes that do not permit the appearance of legal practitioners.
- ii. Some statutes permit appearance of advocates only with the permission of the tribunal concerned.<sup>37</sup>
- iii. Some statutes recognize the right to be presented through an advocate.<sup>38</sup>

The view taken was that legal representation is not an inevitable part of the principles of natural justice and thus could not be claimed as a matter of right.<sup>39</sup> Initially, the Courts observed that there is no inherent common law right for a party to be represented by counsel; such a right can only be claimed through a statutory provision.<sup>40</sup> However, this perspective has shifted significantly. Emphasis is now placed on the necessity of legal representation in adjudicatory proceedings, with some courts rendering it almost mandatory, thereby restricting the adjudicator's discretion. Procedural restrictions regarding legal representation have also been liberalized.<sup>41</sup> The Supreme Court has interpreted the term "procedure established by law" in Article 21 of the Constitution to encompass fair and reasonable procedures, which include the right to appeal and the right to counsel.<sup>42</sup> The right to legal aid is also constitutionally guaranteed. To comprehend the position in India, it can be stated that in cases where legal complexity is minimal, no oral testimony is required, or the individual is sufficiently qualified to manage the case, the denial of legal counsel may not constitute a breach of natural justice.<sup>43</sup> However, in other circumstances, such a denial could constitute a violation of natural justice.

### **(3.3) DOES AN ABSOLUTE RULE AGAINST LEGAL REPRESENTATION BEFORE THE OMBUDSMAN CAUSE A SERIOUS PREJUDICE TO THE PARTIES CONCERNED? : A PRACTICAL APPLICATION OF THE PRINCIPLE IN INDIA**

It is pertinent to note that RBI Ombudsman adjudicates complaints against a plethora of entities

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<sup>37</sup> S. 36(2)(a), 36(2)(b) & 36(4), Industrial Disputes Act, 1947.

<sup>38</sup> S. 282, Income Tax Act, 1961; S. 14 & 23, Recovery of Debts due to Banks and Financial Institutions Act, 1993; Family Courts Act, 1984.

<sup>39</sup> Kalandi v. Tata Locomotive & Engineering Co., AIR 1960 SC 914; Mohinder Singh Gill v. Election Commissioner, (1978) 1 SCC 405,439.

<sup>40</sup> T. Rajagopala Ayyangar v. Collector of Salt Revenue, AIR 1937 Mad. 735.

<sup>41</sup> Supra 30, at 351.

<sup>42</sup> M.H.Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

<sup>43</sup> Krishna Chandra v. Union of India, AIR 1974 SC 1589; (1974) 4 SCC 374; Hari Prasad Singh v. CIT, AIR 1972 Cal 27; Sunil Kumar v. State of West Bengal, AIR 1980 SC 1170; (1980) 3 SCC 304.

including regional rural banks<sup>44</sup>, where many individuals may be illiterate and unaware of such mechanisms. In a country like India, with its emphasis on *financial inclusivity*; any statute, especially those related to banking services that affect people's rights and liabilities, must account for this reality. The absence of legal representation may result in injustice, particularly for the less privileged. These provisions should not be interpreted solely with the urban elite and literate individuals in mind, who have access to auditors and secretaries to represent them.

For instance, 'deficiency in service' constitutes a ground for complaint, indicating a shortfall or inadequacy in any financial or related services that the Regulated Entity is statutorily or otherwise required to provide. It is unreasonable to expect a layman to know the statutory requirements in such banking services; thereby creating a situation *requiring legal expertise*. Similarly, section 15(2) of RB-IOS mandates the Ombudsman to take into account the principles of banking law and practice before passing a reasoned Award, necessitating contentions and submissions with specialized knowledge in complex banking laws and related principles.

Section 18(2) of the RB-IOS stipulates that the Regulated Entity must appoint a *Principal Nodal Officer* at their head office, who should be no less than a General Manager or an officer of equivalent rank. This officer is responsible for representing the Regulated Entity and providing information regarding complaints filed against it. The Regulated Entity may also appoint additional Nodal Officers to assist the Principal Nodal Officer for operational efficiency. Therefore, legal assistance from advocates should not be denied, especially considering that the officers of the bank are allowed to attend such proceedings. Denying similar assistance to one party in the dispute creates an unfair imbalance and constitutes a blatant violation of the principles of natural justice.

#### IV. CONCLUSION

As Subbarao, J. notes, the issue at hand presents a 'problematical solution' intended for the avoidance of the apprehended evils. In his experience, a skilled lawyer is invaluable in the adjudication of cases. While it is true that, like any other profession, the legal field includes individuals who may obstruct rather than aid the Court. But the appropriate remedy is not to

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<sup>44</sup> S. 3(1)(e), Reserve Bank - Integrated Ombudsman Scheme, 2021.

exclude the trained legal element from assisting administrative tribunals.<sup>45</sup> It is respectfully submitted that the following observations by Lord Denning, accurately reflect the law on this matter and are therefore worth quoting.

*“... tribunal is not at liberty to lay down an absolute rule: ‘We will never allow anyone to have a lawyer to appear for him’. The tribunal must be ready, in a proper case, to allow it. That applies to anyone in authority who is entrusted with a discretion. He must not fetter his discretion by making an absolute rule from which he will never depart.”*<sup>46</sup>

The current framework imposes a complete and express prohibition on advocates appearing before the Ombudsman. This provision not only violates Article 19(1)(g) of the Indian Constitution and Section 30 of the Advocates Act, 1961, but also contravenes the principles of natural justice, which all quasi-judicial bodies are required to uphold. Therefore, it is reverently submitted that the impugned provisions, insofar as they restrict the right to legal representation, are unconstitutional. It is recommended that the relevant provisions of the Ombudsman Scheme be amended to allow for legal representation.



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<sup>45</sup> A.N. Rangaswami & Anr. v. The Industrial Tribunal, Fort St, AIR 1953 MAD 447.

<sup>46</sup> Enderby Town Football Club Ltd. v. Football Assn. Ltd., 1971 Ch D 591 (CA).