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TITLE OF THESIS/TITRE DE LA THÈSE

Implementation of Ambassador Plan in India

UNIVERSITY/UNIVERSITÉ

Carleton University

DEGREE FOR WHICH THESIS WAS PRESENTED/

GRADE POUR LEQUEL CETTE THÈSE FUT PRÉSENTÉE

M A

YEAR THIS DEGREE CONFERRED/ANNÉE D'OBTENTION DE CE DEGRÉ

1978

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IMPLEMENTATION OF OMBUDSMAN PLAN IN INDIA

by

Girdhar B. Sharma, M.A.

A thesis submitted to the Faculty of
Graduate Studies and Research in
partial fulfillment of the requirements for the degree of Master of
Arts -- Department of Political
Science

Carleton University

Ottawa, Ontario

5 October, 1978

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The undersigned recommend to the Faculty
of Graduate Studies acceptance of the thesis

"Implementation of Ombudsman Plan in India"

submitted by Girdhar B. Sharma

in partial fulfillment of the requirements for
the degree of Master of Arts

Thesis Supervisor

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Carleton University

November, 1978

ABSTRACT

Having been set up under the Swedish Constitution of 1809, the Ombudsman idea has spread around the world. A basic objective of the present study has been to prove or explode the hypothesis thus far untested - that the Ombudsman institution suits only small countries with relatively small populations. With a view primarily to examining this hypothesis, we undertook to study the two special Ombudsman type Indian mechanisms functioning at the national level and the three State Ombudsman plans. We further undertook a critical examination of the central/national general Ombudsman plans proposed from time to time in the past so as to analyse their suitability to fulfill the administrative requirements of India under the present circumstances. Having examined these proposals, we reached the following broad conclusions: (i) that all the central/national plans formulated thus far were unsuitable to meet the requirements of the country and therefore would require a great deal of modification before their adoption; and (ii) that for the success of even the best possible plan, reforms in other politico-administrative institutions constituted a necessary condition. Although the successful implementation of any Ombudsman plan cannot be guaranteed even after the introduction of these changes, it would be doubtful without them. In view of the foregoing we have suggested an alternative Ombudsman plan. The conclusion borne out by our study is that adjustments in the prototypes of the plan are required before one can be suitably adopted to meet the needs of a large developing country like India.

ACKNOWLEDGEMENTS

The author wishes to express his gratitude to Professor Donald C. Rowat, Department of Political Science, Carleton University, and his supervisor, but for whose unceasing guidance and sympathetic attitude this thesis would not have been completed in such a short time. Thanks are also due to Professor George Roseme, Assistant Chairman, Department of Political Science, who throughout the author's period of stay at Carleton has been a source of encouragement and inspiration, especially during some of the very depressing moments. I would be failing in my duty if I refrain myself from expressing my sense to debt towards my friend Mr. Raymond Bazowski, on whose friendship and cooperation I could always bank upon for anything that I found beyond my reach in this alien world.

Although I might be charged with being formal with those with whom one should be most informal - I cannot resist the temptation to express my heart felt feelings of gratitude towards my wife - Vimlesh and my three kids - Pankaj, Niraj, and Anupam, who first had to undergo the torture of separation from me and stay back home and who have been missing me all the time ever since their joining me here.

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CHAPTER ONE

INTRODUCTION

THE GROWING INTEREST:

The all-round response evoked by the Ombudsman institution during the last two and a half decades is probably unmatched and unparalleled by any other administrative institution during the entire spectrum of the 20th century. Surprisingly enough, in spite of all kinds of social, economic, legal, constitutional, political, administrative, demographic and ecological diversities prevalent among the nations in all parts of the world, the "Ombudsman" institution has fascinated them all to a lesser or greater extent. Of late not only has there been an accent on setting up "Ombudsman type" grievance handling mechanisms at the various levels of government but also such specialized institutions for spheres of activity such as education, correctional services, press, racial relations and business management. In the international arena, interest in the Ombudsman institution has found one of its finest culminations in the First International Conference of Ombudsmen at Edmonton (Alberta) in September 1976, which succeeded in drawing thirty nine Ombudsmen from eighteen different countries.¹

¹ International Bar Association (Ombudsman Committee), Newsletter (Allentown: Pennsylvania, December, 1976), p.1.

In the wake of the enormous amount of interest in the Ombudsman institution generated during all these years, a plethora of literature on the subject has been produced in the form of research studies, books, monographs, research articles and reports of official inquiry committees and commissions, etc.

The recent upsurge of the "Ombudsman phenomenon" obviously induces even an averagely enlightened person in the 20th century to come out with a number of questions such as: "What is this Ombudsman institution like?" "What does it do?" "Where did it originate?" "Why has the idea been so much in currency only recently?" Hence, an understanding of the Ombudsman institution irrespective of its context entails a proper understanding of such questions. These are some of the general questions that the present study seeks to examine. Further, the study also aims at specifically examining the suitability of the Ombudsman institution for a country like India (with a population of 624 million spread over an area of a little over 300 million square kilometers) at the federal level.

IMPORTANCE OF THE STUDY:

The most important objective of the present study is to examine not only the suitability of the Ombudsman system for India in conceptual terms but also in terms of the various national/central legislative draft proposals formulated from time to time in the past. Thus, an effort shall be made by us to undertake a detailed and critical examination of such plans in order to ascertain the possibilities of their success

as indicated not only by the experiences of other countries but also by the functioning of national and state level Ombudsman-like mechanisms in India. However, the Lokpal and Lokayukta Bill, 1971 and the Lokpal Bill, 1977 shall constitute the main focus of our study.

The importance of this study also lies in the fact that very few scholars in India have devoted themselves to an examination of the Ombudsman plans or their implementation. Only two full-length studies, The Citizen Administration and Lokpal by Jagannadham and Makhija (1966), and Lokpal: Ombudsman in India (1970) by M.P. Jain have to-date tended to focus their attention on the examination of Ombudsman plans and problems involved in their implementation. However, from our point of view, both of these studies seem to suffer from four basic limitations. First, Jagannadham and Makhija's efforts in the above study were largely directed towards examining the recommendations made in the Report of the Administrative Reforms Commission (ARC) on the Machinery for Redress of Citizens' Grievances, whereas Jain's study largely concentrated on an examination of the ARC Report, the Lokpal and Lokayukta Bill, 1968, and the Report of the Joint Select Committee thereon from a pre-dominantly legal angle. Secondly, both studies unfortunately seemed to accept the suitability of the Ombudsman institution for India a priori and maintain that the setting up of such an institution was round the corner. Thirdly, dealing mostly with the question of Ombudsman in India before the dawn of the present decade both of them have gone fairly

out-dated and obsolete. Many developments in the field of Ombudsmanship both within and outside the country have taken place since the publication of these studies. At least, four state Ombudsman plans are presently in operation in the country, and now there are at least two new collegial type Ombudsmen plans, namely the Swedish and the New Zealand ones. Fourthly, a very serious lacuna which these two studies suffer from is that both of them have by and large tended to consider the issue of Ombudsman institution for India in isolation from the question of reforms in the other governmental institutions having relevance to, or repercussions on the successful functioning of the former. In a very limited way Jagannadham and Makhija did emphasize the need for strengthening the internal machinery for the redress of citizens' grievances, but they never said anything beyond that. Similarly, at a few points, Jain also did point out the need for constitutional reforms as well as for strengthening the machinery of the Vigilance Commission but he too never went beyond that.

The present study, thus, is an attempt at examining the entire issue of the suitability of the Ombudsman institution for India from a fairly detached perspective. The basic assumption underlying the study is that the question of adoption of the Ombudsman institution in India cannot be considered properly in isolation from the issue of reforms in other governmental institutions relevant to it. Any solution of the problems of citizens' grievances which is

merely confined to setting up of an ombudsman plan can touch no more than the fringe of the entire area. As a matter of fact, the complex issue of citizen-administration relationships, especially in the Indian context, defies an easy solution in the form of an Ombudsman panacea. On the contrary, to us, it appears that a sound solution of such problems warrants some kind of a 'package deal' entailing reforms in the areas related to or impinging upon a number of governmental processes and institutions.

Hence, besides undertaking a critical examination of the two latest central Ombudsman plans of 1971 and 1977, the study also goes into the causes obstructing the implementation of such plans. It is assumed that such a historical analysis of the causes preventing so far the implementation of the central Ombudsman plans might prove to be quite useful, particularly for those interested in the implementation of the U.S. and the Canadian federal Ombudsmen plans. In the meanwhile, however, if the latest central Ombudsman plan of India were to materialize, the study would gain added importance by virtue of its being the first study to critically examine the various aspects of the plan against a broad perspective. It hardly needs be added that, in the case of the materialisation of the latest plan, India would be the first large country (in terms of its population and the size of its administrative machinery), to have such a plan in operation at the federal level. Therefore, in such a situation both the manner in which such a plan has been initiated as well as the manner in which it functions would

be watched by the entire democratic world with a profound keenness and great expectations. Undoubtedly, the process of implementation of the central Ombudsman plan of India would amount to one of the greatest administrative experiments of the century. In the case of its implementation, it shall either establish or explode the validity of the hitherto untested hypothesis that the "Ombudsman institution suits only very small countries with a relatively small population and a small administrative machinery."

Further, the importance of a study like this, at this juncture, also lies in its timely nature. It is most likely to throw light on the extent to which the political atmosphere prevailing in a country at the time of the formulation of the Ombudsman plan influences its basic structure. During the period of internal national emergency declared by the Gandhi Government (i.e. the period immediately preceding the piloting of the Lokpal Bill, 1977 by the Desai Government), suppression of all democratic rights, misuse or rather abuse of powers and authority by those in power or those enjoying their support, and indiscriminate indulgence in corruption were the order of the day. All Opposition leaders had been jailed and complete censorship of the press had been imposed. And since the then prominent Opposition leaders so jailed constitute the Government today, how do they view the issue of the Ombudsman plan is an important issue worth probing into. In view of the long history behind the Ombudsman draft bills at the national/central

level, it is assumed that any major deviations between the proposals of the pre-1971 era and the new proposal of post-Janta party rule should help us discern significant conclusions about the impact of the prevailing political climate upon: (a) the setting up of an Ombudsman's Office; and (b) the nature of legislative enactment under which it is set up.

This statement of our objectives logically leads us to a discussion of the methodology being employed by us for purposes of this study. It will suffice here to say that we have relied basically on the historical and comparative methods of study. As it was not possible for us to undertake any survey research or employ empirical methods at this stage, secondary and tertiary sources of information constitute the sole data-base of our study. Thus, published and unpublished empirical studies, impressionistic books, articles and reports of various official inquiry bodies and Ombudsmen themselves pertaining to India and various foreign countries shall be extensively used by us. However, to supplement the above sources in part, reliance shall also be placed on the observational-analytical methods of study and research.

Before we embark upon the subject of our research as such, it would appear to be desirable to discuss below some of the general aspects pertaining to the Ombudsman institution, its adoption elsewhere, and the arguments for and against it.

WHAT IS AN OMBUDSMAN.

The word "Ombudsman," now constituting an integral part of the English language, is derived from the Swedish word "Ombud" which in Swedish language commonly denotes "a person who acts as a spokesman or representative of another person or persons". In common parlance, however, the word "Ombudsman" has lately come to be employed increasingly to refer to a complaints handling mechanism whether governmental or non-governmental, more particularly in the United States.² Recently, however, an effort has been made to standardize the meaning of the term Ombudsman. Stressing the need for uniformity in the use of the term Ombudsman, the Ombudsman Committee of the International Bar Association has suggested that the term be employed only to refer to those grievance handling mechanisms which come within the scope of the following definition:

An Ombudsman institution is

an Office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion and who has the power to investigate, recommend corrective action and issue reports.³

It is therefore in the afore-mentioned sense that the term Ombudsman is being employed in this paper. Now, the question before us is where this Ombudsman institution had

2. Bernard Frank, "The Ombudsman Revisited," International Bar Journal, 1975, p. 55.

3. Ibid., p. 55.

its origin and how it spread round the world.

ORIGIN AND WORLD-WIDE SPREAD:

Originating in the Swedish Constitution of 1809 as the watch-dog of the Parliament against the royal officers, the Ombudsman remained a unique Swedish institution until its first adoption by another Scandinavian country - Finland in 1919 - a country with close historical ties with Sweden. Nearly thirty three years after its first adoption by Finland, Norway, another Scandinavian country set-up an Ombudsman scheme for military affairs in 1952. In the year 1955, the institution found its third and historically most important adoption by Denmark. Norway appointed an Ombudsman for civil affairs in 1962 and in the same year New Zealand became the first country in the Commonwealth to adopt the Ombudsman institution. Ever since 1962 such institutions have been set up in a large number of countries and in great many there is a move to set-up similar type of institutions. For instance, in the following countries Ombudsman or Ombudsman-like institutions have already been established at one or the other levels of government and are presently in operation: Australia (federal; and States of New South Wales; Queensland; South Australia; Victoria; and Western Australia), Austria, Canada (all provinces except British Columbia and Prince Edward Island) Official Languages Commissioner at the federal level, Fiji, France, Great Britain (Parliamentary Commissioner for Administration; National Health Service Commissioners; and Local-self Government Commissioner),

Guyana, India (Commission for Scheduled Castes and Scheduled Tribes; Minorities Commission at the federal level and Lokayuktas in the States of Bihar; Maharashtra; Rajasthan; and Uttar Pradesh), Israel (Commissioner for Complaints from Public; Soldiers' Complaint Commissioner; Commissioners for City of Jerusalem; and Cities of Tel Aviv and Haifa), Italy (Region of Tuscany), Mauritius, Northern Ireland (Parliamentary Commissioner for Administration; and Commissioner for Complaints), Papua New Guinea (Ombudsman type three-man Commission), Switzerland (City of Zurich), Tanzania and Zambia. In the United States there are Ombudsman officials in the States of Hawaii; Nebraska and Iowa and in the Cities of Atlanta (Georgia); Seattle-King County (Washington); Detroit (Michigan); James Town (New York); Lexington-Fayette county (Kentucky); Wichita (Kansas); Dayton City and School District-Montgomery County (Ohio); and Jackson County (Missouri State). By December, 1977 variations of the Ombudsman system existed in as many as twenty-five countries. Besides, in countries like Bangladesh, Philippines and Greece, provisions pertaining to the establishment of Ombudsman-like institutions have been incorporated in their respective constitutions but no enabling laws have yet been enacted. Further, in a large number of countries laws have been enacted but no appointments have been made - Cyprus, Jamaica, India (States of Orissa and Madhya Pradesh) and Italy. Also, proposals for the appointment of an ombudsman-like official

are under consideration in Belgium; Canada (federal level and Province of British Columbia); India (federal level as well as in the Provinces of Gujarat and Karnatka); Italy, Malaysia (State of Perak); Malta, Netherlands, Pakistan, Switzerland, Trinidad, and Tobago. In the United States several proposals for the setting-up of Ombudsman Offices are under consideration at the federal, state and local levels.⁴ Such a world-wide spread of the Ombudsman idea in such a short span of time makes one curious about examining the probable reasons that account for its popularity in present times.

REASONS FOR ITS WORLD-WIDE SPREAD:

Considering the present world-wide interest in and spread of the Ombudsman idea, the reasons for its comparatively very slow diffusion in the pre-1962 period deserve to be probed into before we try to examine the reasons for its faster spread in the post-1962 era. While doing so the first question that comes up before us for examination is why did Norway and Denmark not become interested in the Ombudsman scheme until after the World War II inspite of their being aware of the existence and successful operation of such schemes in the neighbouring Scandinavian countries? Second, why is it that the idea is being so widely and seriously debated in a large number of democratic countries only recently? Factors such as language, geographic location and cultural isolation of Sweden and Finland were no doubt significant barriers to the spread of knowledge about the

4. International Bar Association (Ombudsman Committee) Ombudsman and Other Complaints Handling Systems Survey (Allentown: Pennsylvania, July 1975-June 1976), pp. 5-16 and Id., p. 58.

Ombudsman-idea out-side of Scandinavia but no such barriers seemed to have existed for countries like Norway and Denmark. Nor could such factors justifiably explain the reasons for its adoption by Finland itself after nearly a hundred, and ten years of its establishment in Sweden. In fact, no simplistic explanation can provide a logical and satisfactory answer to the questions posed above. To us, it appears that no single factor or reason could account for the world-wide spread of this idea in the post-World War II era in general and post-1962 period in particular. The following thus, may be stated as some of the significant factors that account for the world-wide spread of the Ombudsman idea during the present times.

(a) The Changed Socio-political Environment:

The changed socio-political environment of the world in the post-II war period, witnessing the ever-growing amount of acceptance of the "Welfare State ideal" by a large number of countries on the one hand, and liberation of an equally large number of countries from the colonial rule, significantly influenced the spread of the Ombudsman idea. The unprecedented increase in the volume of the functions of the State following the acceptance of the welfare state ideal and the consequent growth in its structure, powers and discretion rendered all traditionally available means of control over its operations and personnel ineffective. As "power corrupts and absolute power corrupts absolutely" and as "where there is discretion there is room for arbitrariness",

necessity being the mother of invention, it became a compelling necessity to search out effective means for exercising control over the vast powers and discretion enjoyed by the State functionaries. Further, establishment of "home-rule" in the newly liberated countries (wherein misuse of powers and authority was largely attributed by the nationalist leaders to the tyrannical foreign rule) and consequent misuse of powers and discretion by the native rulers coupled with greater amount of international exchange of ideas contributed substantially to the spread of the Ombudsman idea.

(b) Greater Awareness About Protection of Citizens' Rights:

The gradual culmination of the ideal of welfare state into the reality of what ultimately came to be known as the "Administrative State" soon led to the realization of its possible dangers for the enjoyment of fundamental democratic rights by the citizens. Thus, time and again a growing concern was expressed, both by the established as well as the newly born democratic states for providing effective safeguards against the infringement of democratic rights and freedoms of the citizens. However, it was not until the passage of two decades after the World War II, that the Ombudsman institution came to be identified as an effective measure for the protection of such rights against the ever-expanding state horizons.

(c) The Efforts of Professor Hurwitz:

The rapid spread of the Ombudsman idea in the post-World War II era owes itself to a certain extent to the efforts of Professor Hurwitz, the first Danish Ombudsman. Professor Hurwitz, after his appointment in 1955 as the Denmark's first Ombudsman, devoted much energy to promoting the plan. He wrote articles for European and international journals and travelled as far as Vienna to give speeches about it. He also willingly interrupted his busy schedule to give information to visitors or enquirers from other countries. The early discussion of the plan and its adoption in New Zealand owe much to his ability and willingness to write and speak in English. He prepared a long pamphlet in English on his office and wrote articles for British and American journals. He also spoke to academic audiences and appeared on television in Britain. Some indication of the strength of his impact is that, after his return he began to receive letters of complaint against British Administration.⁵ Lately, Judge Baxelius - a Swedish Ombudsman and Guy Powels (now Chief Ombudsman of New Zealand) contributed in no less significant measure to the propagation of the idea through their writings and speech-making foreign tours.

(d) Role of U.N. Conferences and International Commission of Jurists:

The spread of the idea has also been stimulated by the activities of the United Nations and the International

5. D.C. Rowat. The Ombudsman Plan: Essays on the World-wide Spread of An Idea (Toronto: McClelland and Stewart Ltd., 1973), p. 119.

Commission of Jurists. Both have taken a very active interest in the Ombudsman institution and organized periodic conferences on human rights in various parts of the world where the idea has been a subject of discussion. These conferences have included key officials from most of the countries in the area concerned. The International Commission of Jurists in addition to the influential report prepared by its British Section in 1961, recommending a Parliamentary Commissioner for Britain, has frequent articles on the subject in its Bulletin. Among the efforts of U.N. in propagating the idea, the 1967 U.N. Seminar in Jamaica for Central and South America, with Swedish Ombudsman Bexelius as a guest expert, is note-worthy.⁶

(e) The Ombudsman Committee of the International Bar Association:

The Ombudsman Committee of the International Bar Association, headed by Bernard Frank, which has adopted spreading of the Ombudsman institution as its chief moto, has contributed and is in fact contributing significantly, to the propagation of Ombudsman idea on a more or less continuous basis. Through the publication of its monthly Newsletter and periodic surveys on Ombudsman and similar complaints handling mechanisms, it keeps those interested in the subject abreast with the latest developments in respect of such institutions throughout the world.⁷

6. Ibid., pp. 119-120.

7. The Survey Op.cit., p. 2.

(f) Role of Intellectuals:

It would be no exaggeration saying that in addition to the significant contributions made by the factors mentioned above, the intellectual movement generated by the writings, researches and testimonies of Prof. D.C. Rowat, Prof. Walter Gellhorn, Prof. Anderson, Prof. Davis, Prof. Peel, Prof. Brian Chapman, Prof. W.A. Robson, Prof. Weeks and Prof. Hill, etc., have all gone a long way in spreading the Ombudsman idea through-out the world.

Before proceeding further, it needs to be pointed out as to why is it that the Ombudsman institution is thought of as a desirable solution or remedy for the protection of citizens' rights against the ever expanding powers and discretion of the State and its functionaries. After all, what are some of the advantages inherent in the adoption of an Ombudsman institution over other existing mechanism for exercising control over the State and its functionaries in modern times ?

WHY AN OMBUDSMAN?

As pointed out above, there is a great concern today with the capacity of government to deal with the grievances of those who have (or believe they have) suffered injustice from the officials who govern. The right to complain, the right to be heard, and the right to have corrective action taken if one has suffered harm from government are human rights. We know that human rights are not protected merely by words and phrases in constitutions,

charters, laws and declarations. Human rights are primarily protected by effective machinery which implements the constitution, the charter, the law or the declaration. The Ombudsman is one of the institutions essential to a society under the Rule of Law, a society in which fundamental rights and human dignity are respected.⁸ Bernard Frank identified the reasons for the desirability of the Ombudsman institution as follows⁹ :

1. The modern state has assumed an enormous multitude of functions as the result of social and welfare legislation-welfare, education, medical care, housing and social security-affecting the lives and property of every one. Extensive powers and discretion have been granted to all types of boards, agencies, and departments, and in one-party states to party as well as government officials. The possibilities of friction between officials and the citizens have been greatly increased. Protection of the individual is required against executive and administrative mistake and abuse of power. This is true in the industrial countries as well as developing countries.
2. The traditional concern for the guaranty of the legal rights of the individual has become even greater in modern society. The activities of public administration have become so comprehensive and the power of bureaucracy so great that the legal status of the individual needs additional protection.
3. The legislature traditionally concerned with the observance of laws and rulings by public officials has at the same time extensively delegated powers to the administrative authorities. The Ombudsman can serve to aid the legislature in its function of supervising the executive and administrators.
4. The existing mechanisms for adjusting grievances are inadequate:

8. Bernard Frank. Op.cit., p. 2.

9. Ibid., pp. 55-57.

- (a) The legislator (if he investigates complaints) is taken away from his main function of studying and passing legislation. His role in adjusting complaints is frequently limited because of lack of sufficient funds and staff and inability to have direct access to files and information. He must of necessity rely in most cases upon a reply from the agency or department he is investigating. Party affiliation may affect his role in handling grievances.

In Parliamentary countries, the Parliamentary Question is inadequate. The investigation is by the department against whom the complaint has been made and the reply by the Minister is that of his department.

- (b) The courts everywhere play a major role in the correction of abuses by government. But litigation is expensive, tension creating, protracted and slow-moving and, in many cases, the citizen bears with injustice because he cannot afford or does not wish litigation. Courts may be precluded from hearing appeals either by law or by technicalities of form, time, standing, jurisdiction, nature and extent of interest, the character of administrative acts may be limited by such questions as to whether the agency acted within its powers, was the ruling supported by substantial evidence or was the action reasonable and not arbitrary.
- (c) Administrative courts even when using procedures as informal as possible still follow court like adversary procedure. Legal representation is the normal rule. Such courts usually move slowly and there is great delay in ensuring the execution of the judgement when delivered. Grievances must concern an administrative decision and must generally be brought before local courts or regional courts initially.
- (d) The executive may frequently handle grievances but is in essence investigating himself and is in great part

relying on the reply from the agency or the official against whom the complaint was made. Party affiliations of persons making the complaints may also be important. Executive complaint agencies lack the essential characteristics of independence from the executive.

- (e) Administrative agencies may have within their structure channels for complaints but such system lacks impartiality. The appeal system, if one exists, is expensive and time-consuming.
- 5. The Ombudsman gives the citizen an expert and impartial agent without personal cost to the complainant, without time-delay, without tension of adversary litigation, and without requirement of counsel or intervention of those highly placed.
- 6. The presence of the Ombudsman has psychological value. His Office gives the citizen the confidence that there exists a watch-dog for the people who will hold government accountable.
- 7. The Ombudsman can be best engrafted upon the political and legal systems of a country.

Bernard Frank, however, fails to identify the following important elements of desirability of the Ombudsman institution:

- 1. Even from the point of view of protection to services (i.e. administration) such an institution is necessary for protecting their image on the public in its true character and for ensuring that the average citizen is not fed on prejudices, assumptions and false notions of their quality and standard.¹⁰ Thus, functioning as a 'safety-valve' for the former rather than being its enemy.

¹⁰. India, Interim Report of the Administrative Reforms Commission: Problems of Redress of Citizens' Grievances (New Delhi: Government of India Press, 1966), p. 3 (Hereinafter referred to as the ARC Report).

2. Since the greatest weapon of the Ombudsman is criticism, he does not interfere with the day-to-day administration. Unlike appeal bodies, he does not substitute his judgement for that of the official, nor does he, like the courts, quash decisions. Even where he has the power to prosecute as in Sweden, he rarely resorts to its use.¹¹
3. Further, the Ombudsman deals with many matters of mal-administration that are not subject to court review or are not serious enough to warrant the high cost of the court review. For example, he may deal with complaints about getting no answer to an application i.e. a situation of no action, leisureliness in replying to mail, tardiness or bias in making a decision not giving sufficient information on a decision or a right of appeal.¹²
4. The very fact of existence of an Ombudsman system has a tonic effect on public administration in making it more responsive, efficient and receptive to new ideas. The following remarks of Prof. Gellhorn in the limited context of Denmark seem to apply to all Ombudsman systems in general.

Prof. Gellhorn argues: The Ombudsman's work has indubitably had a tonic effect upon public administration. A number of administrators frankly acknowledge that laziness has diminished because during the past decade an out-sider has been in a position to criticise. Work methods have in some instances been rationalized at the behest of superior officials impressed by the Ombudsman's suggestions concerning other organizations. Moreover, staff that had like aging humans, become too "set in their ways have sometimes been liberated from their bondage by the Ombudsman's fresh approach...(increasing their) receptivity to proposed changes.¹³

11. Canada, The House of Commons, Standing Committee on Privileges and Elections: Minutes of the Proceedings and Evidence, (No. 7 by Prof. D.C. Rowat, 1st. October, 1964), p. 506.

12. Ibid., p. 500.

13. W.A. Gellhorn, Ombudsmen and Others (Cambridge: Harvard University Press, 1966), p. 36.

Hence, the Ombudsman has an important role to play, albeit "in the improvement of public administration. Although, he is traditionally able to correct injustice by direct means only in a small number of cases, the indirect benefits he provides may be quite important."¹⁴

5. The Ombudsman has a very important role to play in the process of citizen education about the ever-changing intricacies and complexities of administrative structures and their procedures of work. In a fairly large number of cases the Ombudsman's role involves no more than explaining to the bewildered citizen the reasons for the decision he is complaining against. Emphasizing this aspect of his role Prof. Hurwitz says:

Since in many instances, the administration gives no reason for its decisions, and since the complainant does not often have sufficient knowledge of the basis for the decision in question, he often does not understand it. In many instances, by giving a detailed explanation of the whole matter, it has been possible for the Parliamentary Commissioner to make the complainant understand that the treatment of the case and decision taken, gives no occasion for complaint.¹⁵

Thus, in brief, in its ideal form exhibiting the characteristics of: (i) independence; (ii) impartiality; (iii) expertise in government; (iv) universal accessibility; (v) power to recommend and publicize; (vi) initiative; (vii) simplicity; (viii) information, the Ombudsman system aims at promoting the twin objectives of protection and improvement of public administration on the one hand, and

14. Timothy L. Fitzharris, The Desirability of A Correctional Ombudsman (Berkley: Institute of Governmental Studies, 1973), pp. 10-11.

15. Gellhorn, O.p. cit., p. 38.

protection and psychological security of citizens, on the other.¹⁶ It deserves to be emphasized further that, "there is nothing unique about any of these characteristics of the Ombudsman, rather it is their combination which makes the Ombudsman often something special."¹⁷

It would nevertheless appear to be necessary to emphasize that like most positive phenomena the Ombudsman institution has its negative or dysfunctional side too. Hence, the description of its conceptual aspects would remain incomplete unless we deal with this particular aspect of the Ombudsman system too. This is what is being attempted below.

DYSFUNCTIONAL ASPECTS

Of all those responsible for generating an intellectual movement for the dissemination of knowledge about the Ombudsman institution and keeping it alive Prof. Gellhorn perhaps happens to be the most notable person who has tried very carefully to bring the dysfunctional aspects of the former. It would not thus be any exaggeration to say that most other scholars have concentrated on eulogizing or romanticizing the institution rather than critically examining its undesirability aspect. The following description of its dysfunctional aspects thus is based largely on the points

16. William B. Gwyan "Transferring the Ombudsman" in S.V. Anderson (ed.) Ombudsman for American Government (Englewood Cliff., N.J. PrenticeHall, 1968), pp. 41-42.

17. S.V. Anderson, Ombudsman Papers: American Experience and Proposals (Berkley: Institute of Governmental Studies, 1969). p. 3.

raised by Prof. Gellhorn in two of his notable works on the subject.

1. Existence of Ombudsman institution inculcates a sense of timidity among public administrators thereby killing their initiative and decreasing their effectiveness in the enforcement of public policies and programs. By criticizing improper administrative behavior and exposing misconduct, the Ombudsman tends to produce "hidden costs" for the administration: "Awareness that someone is constantly looking over their shoulders causes some public officials to become too timid instead of being too bold."¹⁸

2. The Ombudsman's activities more often than not tend to increase unnecessary red-tape. "Heavy reliance on the administrative files in the conduct of Ombudsman's investigations has a side effect worth-noting. In several countries officials assert that they have paid increasingly close attention to the desirability of preserving detailed records so that were an external critic ever to ask questions about anything they have done, the files can provide complete answers. So far as this re-inforces official care and accuracy it is an obviously desirable development. If, as has apparently occurred in a few instances, adoration of the written work occupies so large a portion of the working day

¹⁸. W.A. Gellhorn, When Americans Complain (Cambridge: Harvard University Press, 1966), p. 52.

that accomplishments worth writing about become fewer and fewer, record keeping is a menace."¹⁹

3. At times a tendency on the part of the Ombudsmen to over-step their jurisdiction in their enthusiasm to do more than what they are meant or intended to do, and influence decisions of state functionaries is found to be quite apparent. Obviously, such an effort on the part of the Ombudsmen creates problems both for themselves as well as the administration. To quote Prof. Gellhorn:

Over-extension (of jurisdiction) may unfortunately be an inherent element in the Ombudsman system. Those who vaunt the system greatly stress the importance of the Ombudsman's personality and his directly participating in every phase of official superintendence. This emphasis upon professionalism may discourage the Ombudsman's using other governmental resources, lest he seems to have adopted "bureaucratic methods", and to be "passing the buck." ... Ombudsmen everywhere tend to stretch themselves as close as possible to the unrealistic limits fixed by uninformed public desire. While unwillingness to stretch at all would be deplorable, willingness to stretch too far has its perils too."²⁰

4. Ombudsman's effort to try most of the time to find fault with the administrators may result ultimately in the withdrawal of all support and appreciation of his work by administration so very essential for the success of the Ombudsman at least during the initial years of the establishment of his office. If the critic constantly depicts himself as a St .

19. Gellhorn, Ombudsmen and Others. p. 52

20. Ibid., p. 42.

George's slaying dragon, officials who do not relish being regarded as dragon may themselves become just a bit critical."²¹

5. Since Ombudsmen in their functioning rely mostly on their common sense, their perceptions of realities of administration and suggestions for administrative reforms or corrective actions may at times be impracticable and hence unacceptable to administration. Though, common-sense is the only source of guidance in complex situations yet, "common-sense does not solve every problem. Government becomes increasingly complex and specialized year after year responding as it must to the complications and specializations of human affairs. The Ombudsman, no matter how intelligent and diligent, cannot be expected to grasp all the implications of every branch of civil administration. While respecting him personally and giving him credit for a high measure of success, officials do at times remark that the Ombudsman just did not understand our problems."²²

6. Existence of Ombudsman institution may also make the citizenry excessively complacent in terms of their vigilance over the governmental operations. This is most likely to be so because "too many seem willing to suppose on much little evidence that God's in his heaven, all's right with the world

21. Ibid., pp. 437-438.

22. W.A. Gellhorn. When Americans Complain. Op.cit., pp. 99-100.

of public administration so long as somebody like an Ombudsman is keeping an eye on operations."²³

Lest the above description of relative advantages and disadvantages or functional and dysfunctional aspects of the Ombudsman system appear somewhat misleading, it seems necessary to clarify here that our purpose of dealing with these aspects was not to present a case either for or against the system. It was simply meant to present a balanced view of the relative advantages and disadvantages in having an Ombudsman like grievance handling mechanism. Experience of a large number of countries shows that the advantages of the system far too out-weigh its disadvantages. Thus it is generally believed that if circumstances require its more advantageous to have such an institution than not having one at all. Hence, in the light of the preceding discussion the main issue being examined below is whether the proposed Ombudsman plan of India will be more advantageous or disadvantageous.

SHOULD INDIA HAVE AN OMBUDSMAN ?

As stated above the functional and dysfunctional aspects of the Ombudsman system apply to almost all countries with a democratic system of government - whether big or small, developed or under-developed, federal or unitary, in more or less equal measure. Still, the different ecologies under which different administrative systems function do produce certain

23. Ibid., p. 53.

peculiar conditions which tend to make them different from each other. Such conditions evolve through the interaction of various environmental and systemic forces over a course of time and are more or less permanent. In addition to these, the varying ecologies of different administrative systems also produce certain circumstances, more or less temporary in nature, which might have crucial significance for public policy decisions like setting up an Ombudsman plan. Hence, the question-whether or not to have an ombudsman office set up in India? And if so, what kind of such office to set up - are questions which ought to be viewed against the background of such peculiar conditions and circumstances as are prevalent in the country and are crucial to making such an important decision. However, the task of outlining such conditions and circumstances having significant bearing on the decision regarding the Ombudsman plan might be difficult and incomplete unless we first deal very briefly with: (a) the frame-work of Indian Government; and (b) the history behind the Ombudsman institutions in India, both of them may in turn throw considerable light on the question of the desirability of an Ombudsman plan for India.

THE FRAMEWORK OF INDIAN GOVERNMENT:

As pointed out above, India is a country of 624 million people. A former British colony and a Member of the British Commonwealth of Nations, it governs itself as a Parliamentary Democracy of the British-type, established under the new Constitution of the Indian Republic of 1950. It has

a federal system under which both the Union as well as the States are autonomous within their respective jurisdictions outlined in the constitution for them. The federal Parliament is a bicameral body consisting of the Lok Sabha (the House of the People) which is the lower house and a Rajya Sabha (Council of States), which is the Upper House. However, unlike the British Parliament, the Indian Parliament is a non-supreme body.

The President of India is both the Head of the State as well as the Union Executive. Constitutionally speaking all executive powers of the Union are vested in him. The Constitution further provides for a Council of Ministers to aid and advise him in discharge of his powers under the constitution. However, in practice the Executive is Council of Ministers' with the Prime Minister as its Head. It comprises some 60 members. The Council of Ministers' being a large, unwieldy organization incapable of efficient functioning, the real powers of the Union Government are in effect exercised by a smaller body - the Cabinet which presently consists of 20 members including the Prime Minister. All important policy decisions are taken by this body. Virtually, all important proposals for legislation are initiated by the Cabinet. The members of the Cabinet are the real political heads of the respective Ministries and Department of the Union Government placed under their charge. Each Minister is directly responsible for and accountable to

the Parliament for the efficient and proper administration of his charge and, therefore, empowered to exercise control over it. India, like Britain, and unlike New Zealand, has preserved the fiction that the Minister has taken the decision even when it is taken by a subordinate and a very insignificant official and thus has to be accountable to the Parliament for all kinds of acts of omission and commission on the part of his subordinates.

Much like its British counterpart, the Public Service employment is based on a life long career. Most of the top services and positions under the Union Government are filled through open competitive examinations conducted, from time to time, by the Union Public Service Commission. Established under the constitution of India, the UPSC has been made completely independent of the Government.

Although, technically speaking, the Council of Ministers remains in office so long as it enjoys the confidence of the Lok Sabha, in effect it continues to be in office as long as it has a comfortable majority of Members in that House.^(22 a) Nevertheless, strong party discipline i.e. voting according to the party-line, evergrowing cost of electioneering, non-recognition of independent candidates for election by the electorate, the superior-technical expertise and assistance available to the executive, the extensive amount of patronage exercised by the executive even over the legislators coupled with the basically rural-parochial background of the Indian parliamentarians, has considerably weakened the parliamentary

22 a. This was at least largely the case with Pandit Nehru at the time of Chinese aggression in 1962 when a section of the Congress men in the the Parliament are reported to have been persuading the President to ask for Pandit Nehru's resignation from the Prime Ministership.

control over administration in India.

The Indian Judiciary with the Supreme Court of India at the top, and High Courts in the middle and District and other courts at the lower levels has been exalted to a very high level of independence under the constitution of India. But the role of the Indian Judiciary in regard to redress of citizens grievances, is largely hampered inter alia by its inability to examine the merits of the decisions made by the executive as well as the lack of willingness on its part to review the cases involving exercise of administrative discretion.

BRIEF HISTORY OF THE INSTITUTIONS IN INDIA:

The Ombudsman idea is not an altogether new idea for the Indians. It was first talked of in the country by late Mr. K.M. Munshi, a constitutional pundit, a parliamentarian and a novelist who was also a member of the Constituent Assembly of India in February, 1960 i.e. at least two years before its introduction in the New Zealand. Participating in the national debate on the need for a Permanent Tribunal of Inquiry, in a statement to the press, he decried the idea of setting up of such a tribunal and instead commended the Swedish practice regarding appointment of an Ombudsman for controlling maladministration.²⁴ However, it is surprising that the idea did not catch on until the year 1962, incidentally, the year of its adoption by the first Commonwealth parliamentary country, namely, New Zealand.

24. R.K. Swamy, "The Case For A Permanent Tribunal of Inquiry", Modern Review, April, 1964. p. 264

However, the credit for generating a live interest and debate on the Ombudsman goes to late Mr. M.C. Setalvad, the then Attorney General of India, who in the course of his inaugural address to the Third All-India Law Conference in August, 1962 (New Delhi) urged upon the participants to undertake a study about its feasibility in India.²⁵ Again on 9th October, 1962 during his lecture to the public service probationers at the National Academy of Administration, Mr. Setalvad reiterated the need for an expert body to study the implications of the adoption of such an institution by India. On the 3rd April, 1963, while the demands for grants of the Law Ministry were being debated, Dr. L.M. Singhvi, M.P., raised the issue of setting up an ombudsman office in very emphatic terms and consistently campaigned for it in the Parliament during the years 1963 to 1965.²⁶ In July, 1963. Mr. P.B. Gajendragadakar C.J. of the Supreme Court of India, in his address to the members of the Indian Institute of Public Administration commending the Ombudsmen idea, made a very strong plea for its adoption by India.²⁷

25. According to Kagazi, "Ombudsman was first spoken of in India largely unofficially. It was mentioned by Shri M.C. Setalvad the then Attorney General of India in his inaugural address to the Third All India Law Conference held in New Delhi in August, 1962." For details regarding this aspect refer to M.C.J. Kagazi, "Control of the Administration" Public Law Journal, 1968, pp. 254-55.

26. For Dr. Singhvi's campaign see Chapter third of the thesis.

27. ARC Report. Op.cit., p. 8.

Officially, the Ombudsman institution was first spoken of in India by the Rajasthan Administrative Reforms Committee. In their report submitted to the State Government in September, 1963, the Committee strongly recommended the appointment of an Ombudsman for the State.²⁸ On the 3rd November, 1963 late Pandit Nehru, then the Prime Minister of India, in his address to the All-India Congress Committee (AICC), at Jaipur admitted that the Ombudsman's idea had fascinated him, for the official had the overall authority to deal with the charges even against the Prime Minister and commanded respect and confidence of all. He, however, felt that in a big country like India, it was beset with difficulties.²⁹ On the 9th of April, 1965 a resolution was moved in the Lok Sabha (House of the People) for setting up a committee of the Members of the Parliament to examine the question of a suitable machinery for the redress of citizens' grievances including the institution of the Ombudsman. The then Minister of State in the Ministry of Home Affairs referred to the fact that a Study Group of Members of both the Houses was already working on the task of administrative reforms and requested that its report be awaited.³⁰

28. For detailed recommendations regarding the Committee's proposal refer to Rajasthan, Report of the Administrative Reforms Committee (Jaipur: Central Government Press, 1963) Paras. 3.13.2 to 3.13.17.

29. ARC Report Op.cit., p.8.

30. ARC Report Op.cit., p. 9.

However, before the said Study Group of M.P's could come out with their report, the Government of India decided to appoint a high powered "Hoover-type" Administrative Reforms Commission in January 1966 and assigned to it inter alia the task of considering the problems of redress of citizens' grievances.³¹ Consequently, the work of the Study Group was suspended. What did ARC do about the subject of citizens' grievances and what was the ultimate outcome of its recommendations is being discussed below.

THE POST-ARC ERA:

Realising the crucial nature of the problem of redress of citizens' grievances against administration, immediately after settling down to work, the ARC thought it most desirable to take this particular term of reference up for consideration by themselves. Instead of appointing any separate task force or study group for this purpose (as they did in the case of other terms of reference) the ARC themselves studied the whole issue of citizens' grievances in all its ramifications. In their interim report submitted to the Government on 20th October, 1966 they strongly recommended the adoption of an "Ombudsman type" system both at the federal as well as state levels and also appended a draft bill - Lokpal and Lokaynbtta Bill, 1966 to their report. Having accepted the recommendations of the ARC regarding adoption of

31. The ARC was appointed videthe Ministry of Home Affairs Resolution No. 40/3/65-AR (p) dated 5 January, 1966 with Mr. Maraiji Desai as its chairman.

"Ombudsman type" system, the Government of India - a new Draft Bill - Lokpal and Lokayukta Bill, 1969 was introduced in the Lok Sabha and passed by it on 20 August, 1969. Unfortunately, however, for want of sincere intentions on the part of the then Congress Government the Bill was never introduced in the Rajya Sabha (the Council of States) and hence it died out. Later in the year 1971 another Draft Bill - the Lokpal and Lokajukta Bill, 1971, different in certain respects from the 1969 Bill was introduced in the Lok Sabha, but this time on account of the dissolution of the Lok Sabha by the President, on the advice of the Prime Minister, the Bill could not be passed by the Lower House even. Recently, a third Draft Bill - the Lokpal Bill, 1977 not only substantially different from the three previous bills has been initiated by the new Janta Government led by Prime Minister Desai, who incidentally happened to be the Chairman of the ARC when it recommended the Ombudsman institution for India.

It, however, deserves to be pointed out that whereas the recommendations of ARC could not materialize at the central level, these did succeed in influencing a number of State governments in their decision to set up "Ombudsman type" mechanisms with their respective jurisdictions. The first Ombudsman legislation was enacted by the Maharashtra State wherein the Lokayukta finally assumed his office in October, 1972. The two other Indian States, namely, Bihar and Rajasthan set up similar institutions of Lokayuktas in 1973. Uttar Pradesh, the most populated Indian province became the fourth

State to join the Indian Ombudsman club in October, 1977.

ADDITIONAL REASONS FOR ADOPTION OF OMBUDSMAN IN INDIA

Are there any circumstances peculiar to India as different from other countries, that could make the Ombudsman institution, for India more desirable than what it is for others? This certainly is an important question which deserved to be examined here. For purposes of clarity, discussion of this aspect may broadly be divided into two parts: (1) a discussion of the peculiar conditions in India that warrant the adoption of Ombudsman; and (2) a discussion of the existing circumstance, if any, necessitating an early adoption. This is what is being attempted below.

1. PECULIAR CONDITIONS NECESSITATING ADOPTION OF AN OMBUDSMAN

PLAN:

For a proper appreciation of the desirability of the Ombudsman institution in India, the conditions warranting adoption of the said institution since long, have got to be understood in terms of her colonial-feudal heritage and socio-economic backwardness on the one hand, and its future goal of building a "Socialist pattern of society", on the other.

First, it has got to be appreciated that in a poor country like India with a vast and diverse population of 624 million, spread over 300 million square kilometers of area, with wide regional disparities of all kinds, the task of development is by no means an easy one. It hardly needs be emphasized that, the task of reconstruction of such a society

involves the difficult "process of transition; transition from a semi-feudal and traditional to a more responsible and rational form of administration; from an agricultural and extractive economy to an economy of industry and trade", from colonial regime conducted by foreigners to a national government."³² Much depends on how the administration shapes itself and how it performs its new role and tasks. The following remarks of Eldersveld et al seem to very aptly summarize the role of public administration in the changed situation:

The achievement of social and political change in developing societies like India is heavily dependent on the quantitative performance of the administrative system. "Administration" is a set of critical structures and processes serving as intermediaries between citizens and leaders, between consumer-producers and planners. In this dual capacity, administration is involved, in one sense, with the utilization, management, allocation and development of human and material resources. However, it is not only involved with the satisfaction of material needs. It will not succeed unless it modifies public attitudes and beliefs, and redirects public and official behavior.³³

Undoubtedly, the 20th century has been a century of universal transition - transition from philosophy of "laissez faire" to that of "welfare" state; from colonialism to freedom and self-determination; from racial discrimination to human rights and human dignity. But whereas the process

32. U.N. Report of the Committee on Standards and Techniques of Public Administration. (U.N. 1951) p. 5.

33. Eldersveld, Jagannadham, and Barnabas. The Citizen and the Administration in a Democracy (Glenniew: Scott, Foresman & Company, 1968), p. 1.

of transition has been gradual, continuous and smoother in the developed independent countries, the same has been comparatively much too sudden, abrupt and painful in the case of developing countries like India. The process of transition in developing countries as a matter of fact is yet to be completed. Owing largely to its colonial-feudal heritage India's administrative system still poses serious challenges for building a new social order based on the principles of egalitarianism, welfarism and democracy. Highlighting an important aspect of the colonial-feudal heritage of the Indian administration, Prof. Kogekar maintains that

.... Under the colonial system of government, the British had in India the civil servants who were a caste by themselves - with a number of sub-castes according to the grades and classes among them - remaining aloof from the community in the matter of their interests, obligations and loyalties. The lack of identity of interests and purposes between the people and their governors has been a factor in Indian administration too important to be ignored.³⁴

By the people, quite obviously under such circumstances, the government was looked upon as a tax collector only or a traditional evil sustained by rapacious troops and corrupt officials. It is not easily conceded, that such a government and its officials can overnight become saintly, competent, public spirited and dedicated to the welfare of the people. The administration had to break-through a thick crust of suspicion and distrust

34. S.V. Kogekar, "Problems of Public Administration in Under-developed Areas with Special Reference to India" in B.B. Majumdar (ed.) Problems of Public Administration (Patna, 1953) p. 23.

before the confidence necessary for genuine cooperation could be generated.³⁵

Thus, even after independence, for a considerable period of time people have continued to be alienated from the Indian administration.

The most colossal problem, therefore, facing the national leaders on the eve of India independence and years immediately following it, was not merely that of how to wipe off this tyrannical image of administration, but, also as to how best to mould and indianize this "steel frame" to suit the requirements of nationalist democratic rule. This was by no means not very easy to accomplish. As a matter of fact, accomplishment of this goal required a double pronged attack to remove serious hurdles existing at both the ends. To further clarify, the task seemed difficult not merely on account of the inability of the "steel frame" to mould itself according to the new situation, but also due in large measure to the inability of the vast multitude of illiterate masses to quickly and easily shed off their age-old sense of fear, distrust and hatred towards the administration.

Thus, in the changed circumstance of the post-independence period,

underlying the concern for a democratic or effective public administration is, first, a belief that public administration must be based on public consent and support. The actions of public agencies and officials should

35. Samuel P. Hayes. "Personality and Cultural Problems of Point IV" in Bert F. Hoselitz (ed.) The Progress of Underdeveloped Areas (Chicago, 1952). p. 210.

reflect the aspirations, interests, and demands, and support potential of the public it serves and directs. Official action should be responsible as well as rational, and above all, must command the respect and cooperation of the citizens. Second is the concept of administration as a "circular process" from the initial formulation of policy, to its implementation, to the modification of policy subsequent to its evaluation in the process of implementation, including feed-back from the public at various steps in this process. This is a continuous dynamic set of interactions. It conceives of citizens in a double role, as producers and consumers of goods and services, or as policy makers and subjects. From both analytical and value premises, therefore, has come the emphasis on democratic responsiveness by officials and responsible citizens involvement as a pre-condition for an effective administrative process in the modern policy.³⁶

Unfortunately, however, in spite of enactment of a democratic Constitution guaranteeing fundamental rights of citizens; adult franchise; constitution of representative legislative bodies; formulation and implementation of five year plans; initiation of programmes of rural development and rural self-government; expansion of educational facilities and mass media, the common man and administration continued to be alienated from each other. However, as the maintenance of a free society depends largely upon the mutual faith and cooperation and appreciation of each other's problem on the part of the people and their government, the means of establishing such a relationship have got to be explored. At

36. Op.cit., n. 33 pp.3-4.

one stage, after independence, Ombudsman was thought of in India, as one such effective device especially on account of the simple, informal and economical nature of its functioning. But partly, on account of circumstances beyond its control (i.e. armed conflict with Pakistan) and partly on account of lack of serious intentions on the part of the Government of India, the objective of establishing an Ombudsman institution at the central level, could not be realized. In the month of June, 1975 an internal national emergency was proclaimed. During which all democratic rights and institutions were thrown away, hence there could be no question of anything being done about the establishment of an Ombudsman like institution for India. However, it would seem more appropriate to discuss this aspect under the following section.

2. PECULIAR CIRCUMSTANCES:

Within the passage of a quarter of a century after independence, the process of establishment of a democratic and functional relationship between the people and Indian administration had perhaps just begun when the unfortunate announcement of national emergency on 25 June, 1975 came up. Declaration of the internal emergency and the incidents of victimization; intimidation and acts of gross abuse of power, authority and corruption that ensued thereunder, are perhaps unparalleled in the history of democratic self-rule. At present, these acts of excesses of power and atrocities inflicted upon the people at large, are under close scrutiny by a number of Commissions of Inquiry appointed by the Government

of India and a number of State Governments. It is not our intention at all to go into the issue of excesses of power committed during the emergency period. But we only wish to highlight the point that a simple reading of the depositions of people affected by these excesses, before the Shah Commission of Inquiry,³⁷ show that emergency has done irreparable damage to the cause of building a healthy citizen-administration relationship. The process of development of the much needed relationship of mutual faith and cooperation has at least been reversed by more than half a century. Further, on the basis of general observation, it could be said that prestige enjoyed by the Indian administration, in the eyes of the common man today, is much too low even while compared with the prestige enjoyed by it during the British rule. Perhaps, greater awareness about the fundamental rights, coupled with the extreme abuse of power and the realization that all that happened during the emergency was this time at the instance of democratically elected national rulers, has deepened people's distrust and hatred towards Indian administration. Thus, once again, the most stupendous task

37. The Shah Commission of Inquiry was appointed by the Janta Government last May, (1977) to go into the entire issue of excesses committed during the national emergency and matters connected therewith. It has already submitted two interim reports, first in March and second in April and declared emergency as illegal and uncalled for. It has also held Mrs. Gandhi responsible for several excesses committed during the 21 months period of national emergency. The report is presently under close scrutiny by the Home Ministry. A decision as to whether or not to prosecute Mrs. Gandhi for these excesses is likely to be taken very shortly.

that faces the present Janta Government today is how best to regenerate the lost confidence of the people in the Indian political processes and administrative system. The repeated assertions on the part of Prime Minister Desai to correct the excesses and wrong doings of the emergency and punish all those who are responsible for them is nothing but an attempt at regaining the faith and cooperation of the people in the colossal task of nation building. Further, the decision to have these incidents of abuses of power and excesses of emergency investigated by an independent commission of inquiry is also a further step in the same direction. Lately, the assurance of the Desai Government to have the provisions of the Indian Consittution regarding declaration of internal emergency amended in such a manner that no one in future will be able to repeat the political havoc played by Mrs. Gandhi and her caucus, is also intended to remove any lurking sense of fear in the minds of the people about revival of a similar political situation anytime in the future.

Under these circumstances at least, apparently an Ombudsman like mechanism can play a very important and crucial role in the process of regeneration of mutual faith and co-operation and promoting better understanding between the people and the Indian administrative system. The situation would seem to be ripe for the adoption of an Ombudsman plan for India.

CHAPTER TWO

EXISTING OMBUDSMAN MACHINERY FOR THE REDRESS OF GRIEVANCES

In this chapter an attempt is made to critically examine the functioning of existing Ombudsman-type machinery for the redress of citizen's grievances against administration, at the federal as well as provincial levels. This machinery consists of the following:

- 1) The Commissioner for Scheduled Castes and Scheduled Tribes;
- 11) The Commissioner for Linguistic Minorities; and
- 111) Provincial Offices of Lokayuktas.*

these mechanisms - their powers, functions and roles - are examined below.

THE COMMISSIONER FOR SCHEDULED CASTES AND SCHEDULED TRIBES

Article 338 of the Constitution of the Indian Republic provides that:

- 1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President;
- 2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution

*In this chapter, we would not deal with the Central Vigilance and State Vigilance Commissions for two basic reasons: First, the constituted purely by the executive they cannot be regarded as the representatives of the legislature; and second, confined exclusively to the task of investigating allegation of corruption, they do not fit well into the concept of Ombudsman - as a mechanism for the redress of citizens grievances.

and to report to the President upon the working of these safeguards¹ at such intervals as the President may direct and the President shall cause all such reports to be laid before each House of Parliament.

APPOINTMENT AND FUNCTIONS

It was in accordance with the above provisions of the Constitution of India that the President appointed a "Special Officer" designated as Commissioner for Scheduled Castes and Scheduled Tribes for the first time on 18 November, 1950. As the Commissioner was required to report to the President upon the working of the safeguards provided for the welfare of the Scheduled Castes and Scheduled Tribes, at such intervals as the President may direct, it was decided that the Commissioner would report once a year for each calendar year. Thus, the first report of the Commissioner was for the calendar year ending December, 1951. It was, however, subsequently decided that the report would be for the financial year and the sixth and seventh reports were accordingly for the financial years 1956-57 and 1957-58 respectively.²

In course of time in addition to the statutory obligation of investigating the working of constitutional safeguards the Commissioner was also assigned the following duties:

- i) Evaluation of the progress of the welfare schemes undertaken by the State Governments and non-official agencies with grants-in-aid from the Government of India;

1. The constitutional safeguards for the Scheduled Castes and Scheduled Tribes have been provided for under Articles, 15, 16, 17, 29, 330, 332, 334, 335, and 164, 244 i.e. V and VI Scheduled to the Indian constitution.

2. India, 48th Report of the Estimates Committee (second Lok Sabha) (New Delhi: Manager of Publications, 1958-59) p. 4.

- ii) Serving as a nominee of the Central Government on the Managing Committees of the non-official organizations receiving grants direct from the Centre;
- iii) Examination of accounts of the non-official organizations receiving grants direct from the centre; and
- iv) Giving advice on any new schemes received from State Governments.³

THE OFFICE OF THE COMMISSIONER:

The Commissioner for Scheduled Castes and Scheduled Tribes began functioning with a sketeton staff consisting of one part-time Assistant Commissioner, one whole-time Assistant and one whole-time stenographer in November 1950. Within a year of the functioning of his office, the office was strengthened by adding one Superintendent, one Assistant, two Lower Division Clerks and one Private Secretary to the Commissioner. In January 1952, a full-time Assistant Commissioner was also appointed to assist the Commissioner in discharge of his constitutional duties. To enable the Commissioner to collect factual information about the enforcement of the constitutional safeguards through independent sources, and assist in the compilation of his reports, it was decided to appoint a few Regional Assistant Commissioners⁴

3. Ibid., p.4.

4. The duties assigned to the Assistant/Deputy Commissioners were as follows:

"(a) to investigate cases which may be referred to him by the Commissioner or which may be brought to his notice by the local residents;

(b) to establish close contacts with the Scheduled Castes and Scheduled Tribes, and other Backward Classes, with

in the year 1951. Seven such officials were subsequently appointed during 1952 to 1956, in pursuance of the above decision. By the year 1963-64 the number of these officials went up to seventeen. Sometime later, The Assistant Commissioners were redesignated as the Deputy Regional commissioners. From the very beginning each Regional Assistant Commissioner was initially given the following staff:

a. view to gaining first hand knowledge of the disabilities under which they live and to educate them about the measures that they should adopt for their welfare;

(c) To submit to the Commissioner periodical reports, showing various facilities available for the Scheduled Castes and Scheduled Tribes, in his region and the disabilities under which they live;

(d) To report on the progress of expenditure and of the achievement of the prescribed physical targets from time to time and to investigate and advise on how best the collection of Statistical Data can be improved;

(e) To report on the adequacy of the resources and personnel employed on various schemes by State Governments in whom the responsibility for the implementation of sanctioned schemes in backward class sector is vested;

(f) To help the State Governments in removing the bottlenecks as may be noticed in the actual implementation of the sanctioned schemes and suggest modifications in existing schemes, where necessary in the light of local needs; and

(g) To ensure that cooperation is forthcoming in an adequate measure from the public where the schemes involve public cooperation."

Superintendent	1
UDCs	2
LDCs	2
Steno-typist	1
Farash	3

With the growth of increased responsibilities in the post Second Five Year Plan period, in order to enable the Commissioner's Organization to undertake field work more effectively, a few posts of Research Officers and investigators were also created in 1964-65. Four evaluation units each consisting of one Research Officer and one Investigator were set up on an experimental basis in the Regional Offices at Jaipur, Baroda, Hyderabad and Ranchi. Subsequently, the posts of Assistant Commissioner was redesignated as Deputy Commissioner to give it a better name and status. Headquarters Office was also provided with an additional official designated as Administrative Officer.⁵

On 15th June, 1967 under a so-called re-organization plan the Office of the Commissioner for Scheduled Castes and Scheduled Tribes was re-organized. The regional field establishments of the Commissioner were abolished. The Commissioner was allowed to retain his headquarters organization. Instead

5. India, Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes (Fourth Lok Sabha, First Report, 1968), p. 14.

an extra post of Deputy Commissioner and four research units each consisting of a Research Officer and other investigating staff were created.

PROCEDURE FOR INVESTIGATION:

As for the procedure of investigations the Commissioner has himself described it, time and again, in his own reports. In his Sixth Report (1956-57) the Commissioner stated:

The main function of the Office is to help me in investigating all matters relating to the safeguards provided for Scheduled Castes, Scheduled Tribes, Other Backward Classes and Anglo-Indians, under the Constitutions. For this purpose, they collect material from various State Governments, Ministries of Government of India and non-official agencies. The material thus collected and that contained in my tour reports and the tour reports of the Regional Assistant Commissions is further studied by this Office for incorporation in the Annual Report which is submitted to the President under Article 338 of the Constitution. The office also receives a large number of complaints from individuals and non-official agencies, relating to the injustice and harassment of various types against Scheduled Castes/Tribes. These complaints are also investigated by the office in order to find out the facts, in correspondence with the State Governments concerned and the Ministries of Government of India. In addition, the office also examines in detail schemes received for grants-in-aid from the various State Governments and non-official agencies for the development of the Scheduled and Tribal Areas, the removal of Untouchability and the Welfare of Scheduled Tribes and Other Backward Classes including ex-criminal tribes or denotified communities. This type of detailed examination of welfare schemes coupled with my personal experiences gained through my tours and the reports received from the Regional Assistant Commissioners, help me considerably in the proper evaluation of the welfare activities going on in the country and in advising

the Government of India as regards the type of activity which should be taken up and the extent of financial help which should be given for these activities.⁶

However, in spite of all the efforts on the part of the Commissioner his office could not really become an effective instrument or mechanism for the investigation of constitutional safeguards provided for the Scheduled Castes, Scheduled Tribes and Other Backward Classes, etc., But never before August, 1967 was any effort made by anybody, to draw the attention of the Government towards either the ineffectiveness of the Commissioner's office or the efforts needed for making it an effective and independent constitutional mechanism for investigation of constitutional safeguards provided for these classes. It was during the course of discussion on the Fourteenth and Fifteenth Reports of the Commissioner in the Lok Sabha (House of the People) that attention of the Government was drawn by a large number of Members towards the sorry state of affairs prevailing in regard to the Commissioner's office and the necessity of improvements therein. Following are some of the important views expressed and suggestions made by the M.P.'s during the debate.⁷

6. India, (Ministry of Home Affairs). Report of the Commissioner for Scheduled Castes and Scheduled Tribes (New Delhi, 1956-57), p. 3.

7. Besides the views of the M.P.'s referred to in the main body of the thesis, S.M. Solanki, S. Bhan, P.C. Adichan, M.R. Krishna, Lokhan Lal Kapoor, Vidyarthi, all M.P.'s also participated in the debate and expressed their resentment at the sorry state of affairs in regard to the implementation of the Commissioner's recommendations.

A Member of Parliament, Mr. Siddaya stated:

Every year the Commissioner for Scheduled Castes and Scheduled Tribes is submitting a report to the House for consideration. All these years what was done was just to discuss the report and pass a formal resolution that this House considered the report of the Commissioner and be done away with it. That was all that was being done. And in some years even the consideration was left out; the House used to take note of the recommendations; that is all. The House could not say on the implementation aspect of it. Most of the recommendations, whichever were made in the report of the Commissioner, were not being sincerely implemented either by the Central Government or by the State Governments. The Founding Fathers of the Constitution when they envisaged that this report should be placed before the Parliament, actually meant that it should be considered and decision taken by the House. But that was not being done all these years.⁸

Commenting on the sorry state of affairs pertaining to the Commissioner's position and suggesting creation of a high powered committee to oversee the implementation of his reports another M.P., Mr. R.D. Bhandare said:

When the Constitution came into existence, we were under the impression that the commissioner for the Scheduled Castes and Scheduled Tribes will look after the interests. But I am really sorry to reflect that the position which we contemplated under the Constitution has not been retained. His position has been devalued and therefore, we thought that there ought to be a high powered committee not only to go through the report of the Commission but also to get the suggestions made to by the Commission implemented by the Government. It is contemplated also... that this Committee will look after its own suggested policy and programmes. These have been the aspirations.⁹

8. India, L.S. Deb., cc. 3490-91 (30.8.1968).

9. Ibid., c. 3499.

Mr. Kartik Oraon another M.P. came out with the suggestion of constituting a Standing Parliamentary Committee for having to perform inter alia the following functions:

To examine every year thoroughly the action taken or proposed to be taken as well as the various replies or explanations given by the Government on the recommendations and suggestions contained for Scheduled Castes and Scheduled Tribes and to prepare a report thereon to be presented to Parliament for approval and action.¹⁰

Further, emphasizing the need for filling the existing gap in the existing parliamentary procedure in regard to consideration of Commissioner's reports, Mr. R.P. Thateur, M.P., opened:

Even in the case of Estimates Committee or Public Accounts Committee Reports, there is regular follow-up in the shape of "Action Taken Reports" thereon; but in regard to ~~that~~ Commissioner's report constitutionally placed before Parliament there is not even the check. This is a highly undesirable procedure that must be changed. Parliament will have to take its decisions on the Commissioner's annual reports in the form of a substantive resolution, and the Government will have no other discretion but to fully implement them.¹¹

The fore-going description of the views expressed by the Parliamentarians, therefore, show that the Commissioner for Scheduled Castes and Scheduled Tribes envisaged by the framers of Indian constitution as a kind of special Ombudsman for investigating the working of constitutional safeguards for

10. L.S. Deb., c. 17645 (7.8.1967).

11. L.S. Deb., c. 16595 (2.8.67).

Scheduled Castes and Scheduled Tribes unfortunately could not function effectively as such. It, therefore, becomes imperative to examine the reasons that accounted for its ineffectiveness as an investigating mechanism. For answering the question one has necessarily to go into the history of the evolution of the institution and examine the three important controversies regarding the functions, legal status and abolition of regional field establishments of the Commissioner that clearly reflect on the manner in which the institution was dealt with by the Government of India.

THE HISTORICAL EVOLUTION AND RISE OF CONTROVERSIES:

1. THE FUNCTIONS:

The controversy regarding the status of the Commissioner emanates directly from the non-statutory or so-called developmental functions (i.e. functions (ii) to (iv) quoted above) assigned to him by the Government. Implicit in the very nature of the functions (ii) to (iv) is the fact the Government regards the Office of Commissioner as a part and parcel of its administrative machinery, which is an absolutely misconceived notion of the functions and the role assigned to the Commissioner under the Constitution. As regards the legal controversy pertaining to his functions the Estimates Committee of the (Second House of People), expressed the following views:

The duties entrusted to the Commissioner under item (i) above are no doubt in consonance with the functions assigned to him under Article 338(2). Regarding items (ii)

to (iv) above, however, the Committee are of the view that these duties are not consistent with role of the Commissioner as envisaged under the Constitution. According to Article 338 of the Constitution, the Commissioner for Scheduled Castes and Scheduled Tribes is a Special Officer appointed by the President for the purpose of seeing that the directive of the Constitution is properly fulfilled. His position is more or less analogous to that of a judge. The Committee are of the view that it is not appropriate for him to serve as a nominee of the Central Government on the Managing Committees of the non-official organizations or to examine their accounts or to give advice on the new schemes received from the State Governments and thus, become more or less, a party to them. If he is associated at any stage with the formulation and examination of the schemes which would make him partly responsible for the results flowing, therefrom, then to that extent he ceases to an independent judge as envisaged under the Constitution. The Committee, therefore, recommend that the question of the ...functions of the Commissioner should be reviewed...and that he should be relieved of the duties under items (ii) to (iv) above.¹²

One who intends to maintain the constitutional position in regard to the Commissioner's functions cannot but agree with the (self-explanatory) views expressed by the Estimates Committee. Independent and impartial functioning of the Commissioner is not possible at all until his present functions are pruned in accordance with the suggestions given by the Estimates Committee. The controversy pertaining to his functions leads us directly to a discussion of the controversy regarding the legal status of the commissioner.

12. India, 137th Report of Estimates Committee, (second Lok Sabha 1964), pp. 50-51.

2. THE STATUS QUESTION:

On account of the absence of explicit or specific constitutional provisions defining the status of the Commissioner there has been a lot of controversy about the former's legal status. Further, dimensions have been added to this controversy on account of different legal postures adopted by the Government of India regarding the status of the Commissioner. In order to resolve the constitutional controversy regarding the legal status of the Commissioner, therefore, one has to look into both the letter as well as the spirit of the Indian constitution.

As far as the letter of the Constitution goes, clause (2) of article 338, referred to above says that "there shall be a Special Officer.... The word "Special" pre-fixed to the word "Officer" therein has a definite intent and meaning to connote. The sole purpose of the framers of the Constitution in employing the word "Special" before "Officer" was to ensure that the Officer charged with the important duty of investigating the constitutional safeguards for the Scheduled Castes and Scheduled Tribes, etc., is accorded a status and position distinct from those of other officers. Had it not been so, the framers of the Constitution would be responsible for "...." But they did not do so primarily on account of the fact that they were well aware of the crucial nature of the task and possible consequences of

assigning this delicate responsibility to the regular machinery of the Government. In fact, keeping the cruciality of the task in view, they wanted not only to ensure themselves about the independence of the institution charged with this important responsibility but also the impartiality of his investigations. This would have been almost impossible if the investigation work had been assigned to the regular administrative machinery. The intentions of the Constitution-makers becomes further clear when we try to analyze the constitutional provisions which not only provide for his appointment by the President of India but also submission of his reports to him who has in turn, to present them before both the Houses of the Parliament for discussion. In brief, such an officer could not be contemplated to be "Special" vis-a-vis other officials except in terms of his status and position.

However, leaving the afore-mentioned considerations aside, even if we take the spirit of the constitution into account, it would become clear that the present status of the Commissioner is not quite in accord with it. While we take into consideration the constitutional provisions pertaining to constitutional institutions the nature of whose duties is analogous to that of the Commissioner and examines them carefully, the controversy in question may be solved to a very great extent. A study of the constitutional provisions reveals that wherever they entrusted the task of investigation of

governmental actions to any institution, they have exercised all possible care to see to it that specific provisions are incorporated into the constitution, so as to ensure their independence from the government. It is, however, not very clear, as to why the constitution-makers of India failed to provide for similar provisions for safeguarding the independence and impartiality of the Commissioner for Scheduled Castes and Scheduled Tribes. If we interpret Article 338 (2) of the constitution in the light of the constitutional provisions relating to the Office of the Comptroller and Auditor General (Article 148), and the Election Commission (Article 324) much of the confusion or ambiguity about the status of the Commissioner arising out of lack of specific constitutional provisions safeguarding his independence and impartiality could be resolved. A close look at article 148 and article 324 establishes the fact that the constitution-makers intended the Commissioner to enjoy the same status as that enjoyed by the Comptroller and Auditor General and the Election Commission. However, this could not be so primarily on account of the lack of clear policy and on the part of the Government, regarding the legal status of this office. A detailed examination of the Government's attitude towards the institution right from its very inception proves it beyond doubt.

As mentioned above, the attitude of the Government of India about the Commissioner for Scheduled Castes and Scheduled Tribes can at best be characterized as inconsistent

and irrational. From the description given below the inconsistency and irrationality towards the Commissioner's office would become at once clear.

When the issue of the legal status of his office was raised by the first incumbent to this office with the Government of India, the Government after having consulted the Ministry of Law, decided to accord him a legal status equivalent to that of the Union Public Service Commission and the Election Commission.

In his Annual Report for the year 1952, the Commissioner himself mentioned:

About the status of my office, a decision has been made, according to which the status of this office would be the same as that of the Election Commission, Union Public Service Commission or any other office constituted for such purposes, I have also been declared a Head of a Department. But for the submission of my report and for parliamentary matters, I shall be under the Home Minister. With a view to bring about economy in the administrative expenditure, a certain amount of my work is being done in the Ministry of Home Affairs....¹³

This status position, involving a considerable amount of independence, continued up to the year 1956-57. The Commissioner's report for the year 1957-58 indicates a drastic change in the Government's attitude a reversal of their decision about the status of the office. The Commissioner in his report for year 1958-59, by drawing upon the recommendations of the Study Team on Social Welfare and Welfare of

¹³ India, Report of the Commissioner for Scheduled Castes and Scheduled Tribes, (New Delhi, 1952), pp. 2-3

Backward Classes, 1959, made an appeal to the Government for reversal to its original decision. He also stated:

While emphasizing the need for strengthening the staff at the Commissioner's Office for true and effective evaluation of programmes relating to the Welfare of the Backward Classes, the Study Team for Social Welfare and Welfare of Backward Classes set up by the Committee on plan projects (planning commission)... has in its recent report made significant observations. The Team has stressed the need of an independent status for this organization to ensure independent and unbiased evaluation of welfare schemes for the Backward Classes and has recommended that the incumbent who can ably and independently discharge the functions of the Commissioner should ... be a non-service person, as at present.¹⁴

However, the fact that the Government were undermining this position was further confirmed by the Commissioner's disclosures that on the one hand he was gradually being saddled with non-statutory functions which were later given the respectable caption of "developmental functions" on the other, his organization was excluded from certain coordinating committees and he was not being associated with the policy decisions taken by the government with regard to Welfare of the Scheduled Castes and Scheduled Tribes. Not only this, the question of the status of the Commissioner was raised time and again in the Parliament also, and once the Minister concerned went to the extent of asserting that the Commissioner was administratively under his Ministry and that he was just

14. India, Report of the Commissioner for Scheduled Castes and Scheduled Tribes, (New Delhi, 1958-59), p. 4.

an official of his Ministry.¹⁵ Against this stand of the Minister, the Commissioner in his report for 1958-59, drew upon the recommendations of the Study Team on Social Welfare and Welfare of Backward Classes and also those of the Estimates Committee (Second House of the People) while demanding independent status for his organization. The Study Team on Social Welfare in their report recommended that:

According to the constitutional provisions, the Office of the Commissioner for Scheduled Castes and Scheduled Tribes enjoys an independent status. We have given careful thought to this question and are of the opinion that simply because the Commissioner is attached to the Ministry of Home Affairs (for budgetary and parliamentary purposes) he does not become an officer of the Ministry. Nor can an officer of the Ministry, in case he is considered as one, be expected to do full justice to the independent and unbiased evaluation of these welfare schemes.¹⁶

The Estimates Committee (Second House of the People) in its 48th report 1958-59, made a somewhat similar recommendation in this behalf:

... that the question of the position ... of the Commissioner should be reviewed and should be given an independent status like that of the Union Public Service Commission or the Election Commission....¹⁷

15. India, (Department of Social Welfare), Report of the Committee on Untouchability, Economic and Educational Development of Scheduled Castes and connected Documents (New Delhi, 1969), p. 398 (Hereinafter referred to as the Elyaperumal Committee Report).

16. India, (Planning Commission), Report of the Study Team on Social Welfare and Welfare of Backward Classes. (New Delhi, 1959), pp.180-81.

17. India, 48th Report of the Estimates Committee (Second Lok Sabha, 1964), pp. 4-5.

The Government of India, however, rejected the recommendations of both the Team and the Committee, and instead decided to treat it as a subordinate Office of the Government. According to the 137th report of the Estimates Committee dealing with the action taken by the Government on its 48th report, the Committee expressed the view that:

The Government have obtained the views of the Commissioner on this recommendation and reviewed the whole position. They find that the Constitution does not contemplate giving the Commissioner for Scheduled Castes and Scheduled Tribes an independent status like that of the Union Public Service Commission or the Election Commission.¹⁸

~~The net result of this type of attitude that the~~ Government had adopted towards the Commissioner's Office had been that the Commissioner's Organization has gradually been reduced to the position of a subordinate office of the Government with the result that he has become powerless not only in respect of the various State Governments but even with the various Departments/Offices of the Central Governments. He had been powerless even to collect the basic and requisite data for his assessment in fulfilment of his constitutional duties. His annual reports are a record of his be-wailing and be-seechings year after year.¹⁹

18. Ibid., pp. 4-5.

19. Elyaperumal Committee Report. Op.cit., p. 388

THE ABOLITION OF REGIONAL OFFICES:

The third part of the controversy relates to the abolition of the posts of Regional Deputy Commissioner and their offices and their substitution by a central headquarters organization which was initially located in 1967 in the Department of Social Welfare and transferred to the Ministry of Home Affairs with effect from 7th February, 1973. Justifying the reorganization of the headquarters organization of the Commissioner's Office and winding up of its regional field establishments in a reply to the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, the Central Department of Social Welfare advanced the following views:

The developmental functions of the Office of Commissioner require that the Commissioner should function as part of the Government and advise Government on various schemes and his field organizations should reflect the Government's thinking at all times. On the other hand, the functions under the Constitution imply a special status for the Commissioner as they involve critical assessment of the policies and actions of the Government more or less in the nature of audit. It is obviously difficult for these two kinds of functions to be combined in one person or one organization. It is equally obvious that the administrative department which is directly responsible for ensuring their implementation through State Governments and otherwise, must have at its command an adequate organization for the purpose. The difficulties were likely to be accentuated in the Fourth Plan period and could stand in the way of satisfactory implementation of plan programmes. So it became necessary and urgent to rationalise and streamline the previous arrangements.²⁰

20. India, Report of the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes (Fourth Lok Sabha, 1968) pp. 15-16.

The Department of Social Welfare further went on to state that:

This matter was discussed at several meetings with the Commissioner. It was finally agreed that the combination of constitutional and developmental functions in the Commissioner should be done away with and that the Commissioner should concentrate on the functions laid down in the Constitution....For this type of work, it does not appear necessary to maintain a field organization with senior officers located at different places in the country with separate officers of their own. Even when it becomes necessary to hold local inquiries or spot verifications, which in their nature have to be on selective basis, they could be arranged for effectively through special teams that could move out of headquarters at short notice according to a carefully drawn up programme. Besides, the Commissioner could call upon a variety of sources and agencies such as the Programme Evaluation Organization, Research Institutes, Universities and voluntary agencies for organizing special studies on selected problems of importance. Under such arrangements the Commissioner would be free from routine administrative duties of a Head of a Department, that a large field organization imposes inevitably. It is hoped that this will enable him to sharpen his main role which is to assess the efficacy of the policies and the manner in which the executive functions. Taking all these factors into consideration it was decided in 1967 that the Commissioner should have a strong organization at the headquarters with the necessary facilities to make effective assessment of Government policies and programmes, particularly the safeguards. Accordingly, his office has been augmented by an additional post of Deputy Commissioner for Scheduled Castes and Scheduled Tribes. Four Research Units consisting of a Research Officer and other investigating staff have also been set up there.²¹

However, the Committee on Untouchability, etc., headed by Elayaperumal, an M.P., which submitted its report to the Government of India, 1969, took a very strong offence

21. Ibid., pp. 16-17.

to the Government's decision about the abolition of the regional headquarters of the Commissioner through the so-called reorganization plan.. Dealing with the subject at length, the Committee on Untouchability made the following observations:

...the Government's ...action in the shape of the 1967 reorganization of the Commissioner's Office was thoroughly, unjustified and even contrary to the basic intentions of the constitution-makers. Even though, it was stated in the Departmental note on the scheme of the 1967 reorganization that the matter was discussed with the Commissioner and he agreed to the new scheme it is abundantly clear from a note circulated by the concerned Commissioner at the time of reorganization that he was definitely opposed to the Government's scheme of reorganization. He quoted the Law Ministry's views as far back as 1951, in support of his sound ideas about the Commissioner's organization - that it is necessary from the constitutional point of view that the Commissioner should have his own staff to ascertain facts relating to the working of the safeguards provided in the Constitution. The Commissioner disclosed that even under the scheme evolved in 1956-57, the replacement of the Commissioner's field organizations by that under the administrative Ministry was never contemplated....Abolition of the field organization under the Commissioner and utilization of the savings for setting up a field organization under the Department of Social Welfare, was, however, not the correct solution. The important question is whether the Commissioner can effectively and adequately attend to the duties entrusted to him under article 338 of the Constitution without a field organization.²²

After having gone into the whole question of abolition of the Commissioner's regional field establishments, the Committee on Untouchability came out with a number of sound reasons in support of their strong recommendations for the restoration of Commissioner's regional field establishments.

22. Elyaperumal Committee Report. Op.cit., pp. 398-99.

First, keeping in view the vast size of the country, the resultant diverse nature of its problems, the enormous population of Scheduled Castes and Scheduled Tribes, the linguistic, cultural and regional differences existing between the different parts of the country, the Committee strongly pleaded for the revival of Commissioner's field establishments.²³

Second, taking the federal structure of Indian policy into account the Committee further emphasized the fact that the Commissioner had to investigate the execution of constitutional safeguards not only by the Federal Government but also by the States. For this purpose independent regional field establishments of the Commissioner located in the various parts of the country were indispensable. The abolition of the regional field establishments and their substitution by a centralized organization placed under a department of the Central Government, had resulted in delimiting the role of the newly created organization to centrally sponsored schemes and projects only. Thus, under the changed set up, at least technically speaking, the Commissioner's headquarter's organization had been precluded from looking into the enforcement of constitutional safeguards for these communities by the States.

Third, as regards the Central Social Welfare Department's argument of sending out officers on inspection tours from headquarters, organization and entrusting the task

23. Ibid., Paraphrased from the Committee Report. p. 398.

of study and research to academic institutions as a substitute for the regional field establishments of the Commissioner, it hardly needs be emphasized that the argument is least convincing. A haphazard and intermittent investigation of any sort can hardly be a substitute for a permanent arrangement for continuous on-the-spot investigations and follow-up by the Commissioner's own field establishments.²⁴

Undoubtedly, the abolition of the posts of Regional Deputy Commissioners and their substitution by a central organization under the Department of Social Welfare would have an immensely adverse effect on the independence and impartiality of investigations conducted by such organization. It hardly needs be argued that, being a part of the governmental machinery, the newly created investigation machinery of the Commissioner would not enjoy the autonomy possessed by his erstwhile headquarters organization, on account of its unique constitutional position.²⁵ Taking the same argument somewhat further, it could be pointed out that, the creation of a centralized investigation machinery under the Department of Social Welfare was a thoroughly ill-conceived scheme of administrative re-organization. In the first place, the Commissioner's Office was never contemplated to be an institution for conducting evaluation of welfare schemes on behalf of the Union Government. The Commissioner's office was meant for conducting its

24. Ibid., Paraphrased from the Committee Report, p.399.

25. Ibid., Paraphrased from the Committee Report, p. 399.

own independent evaluation of implementation of constitutional safeguards, in a completely detached manner for reporting to the President of India. The Commissioner, therefore, had to collect information, data, collate and analyze them and base his assessment on them. For doing this, the Commissioner obviously needed an independent headquarters organization of his own, directly reporting and responsible to him.²⁶

Additionally keeping in view the Commissioner's role as an "Educative-cum-grievance redressing mechanism" for the receipts of complaints and conduct of on-the-spot inspections over the entire Indian territory also, such regional offices under him were very necessary. Besides, such an administrative arrangement had its own value in terms of facilitating a two way process of communication between the Scheduled Caste Tribe people and the Government. These objectives could not be effectively accomplished by substituting the Commissioner's regional field establishments by a headquarters organization in New Delhi. He had to have his own extended eyes and ears in the form of regional field establishments if he were to perform his role as a special grievance officer for Scheduled Castes and Scheduled Tribes effectively.²⁷

Hence, concluding their recommendations in regard to the Office of the Commissioner for Scheduled Castes and

26. Ibid., Paraphrased from the Committee Report; p. 399.

27. Ibid., Paraphrased from the Committee Report; p. 400.

Scheduled Tribes, the Committee on Untouchability, etc.,
said:

We ...strongly recommend that the Commissioner's organization must not only be given a really independent status with clearly defined and codified powers, responsibilities and jurisdiction of actions, but his field organization as existing before the 1967 re-organization must also be immediately restored, further strengthened and systematized.²⁸

Unfortunately, however, the recommendations of the said Committee in this behalf, were totally rejected by the Government. The Congress Government especially the one under Mrs. Gandhi never treated this office as anything more than a subordinate establishment under the Government. Recently, during the Janta Party rule, the problems of Scheduled Castes and Scheduled Tribes people have received very serious consideration. The Office of the Commissioner for Scheduled Castes and Scheduled Tribes Commissioner has also been re-organized as a multi-member Commission and endowed with wide powers. Mr. Bhola Paswan, M.P., and leader of the Congress Party in the Rajya Sabha has been appointed as its Chairman.

THE COMMISSIONER FOR LINGUISTIC MINORITIES:

Unlike the Office of the Commissioner for Scheduled Castes and Scheduled Tribes, the Office of Commissioner for Linguistic Minorities was not envisaged originally under the Constitution of India. In fact, the Office of the Commissioner for Linguistic Minorities came into being as a result of an amendment to the Indian Constitution, nearly seven and a half

28. Ibid., p. 400.

years after its inauguration. The brief history of its origin could be described as follows. Early in the year 1954, the Government of India appointed a Commissioner to go into the whole question of re-organization of Indian States. The Commission went into the whole issue of states reorganization in great detail and submitted their report to the Government in September, 1955. In the course of its investigations the Commission found that even if in framing the State boundaries the linguistic principle or criterion was rigidly applied, the problem of linguistic minorities would by no means be fully solved. This would be so, because not all linguistic groups were so placed that they could be formed into separate States. There was a large number of bilingual belts between different linguistic zones and there existed a mixed population, even within the uni-lingual areas. This problem of linguistic minorities was more acute near the boundaries of each uni-lingual or bi-lingual State and there were important places within a State where there were multi-lingual groups of varying strengths.

During the course of its investigations it was also strongly urged upon the States Re-organization Commission (SRC) that the safeguards for linguistic minorities provided for in the Constitution of India had proved ineffective and inadequate. Whatever the merits of such an assertion, the SRC had to take into consideration the fact that a large section of public opinion, both among the proponents and the opponents of linguistic states, favoured the strengthening

of constitutional guarantees for linguistic minorities.

Thus, the broad principles and objectives governing the approach of SRC were stated by the former as follows:

- i) as the problems of linguistic minorities is common to unilingual as well as polyglot areas, the measures to be adopted should be such as can be applied to linguistic as well as composite states;
- ii) while minorities are entitled to reasonable safeguards to protect their educational, cultural and other interests, it has to be borne in mind that such safeguards should not so operate as to perpetuate separatism or to impede the process of national assimilation;
- iii) the system of guarantees to the minorities should not be such as to lend itself to misuse by parties interested in promoting a sense of disloyalties to the State; and
- iv) it should be clearly understood that a State in which a particular language group constitutes the majority, cannot be considered to be the custodian of the interests of all people speaking that language, even when they are residents of some other States.

After having examined the entire issue in all its ramifications, the SRC dealt with the question of suitable constitutional machinery for the enforcement of constitutional safeguards for linguistic minorities. As a result of its recommendations in this behalf, certain amendments were made in the Indian Constitution (Constitution Seventh Amendment Act, 1956) and clauses 350 (A) and 350 (B) were inserted into the constitution.

Of these, article 350 (B) provided that:

- 1) There shall be a Special Officer for Linguistic Minorities to be appointed by the President.

- 2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution and report to the President upon their working at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament and sent to the Governments of the States concerned.

Consequent upon the said amendment, a Commissioner for Linguistic Minorities was appointed and the first incumbent assumed his office on 30th July, 1957, to investigate the following safeguards for the linguistic minorities provided for in the constitution:

- (a) Article 29(1) provides that any section of the citizens residing in the territory of India or any part thereof having a distinct Language, script or culture of its own shall have the right to conserve the same.
- (b) Article 29(2) is to the effect that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
- (c) Article 30 confers on the minorities a right to establish and administer educational institutions of their choice and part (2) of the same article prohibits any discrimination towards such institution on the part of the State in matters such as making of grants, etc.
- (d) Article 337 provides that on demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognized by that State,

direct that such language shall be officially recognized through-out that State or any part thereof for such purposes as he may specify.

- (e) Article 350 gives every person a right to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State as the case may be.
- (f) Article 350(A) provides that: "It shall be the endeavour of every State and of every local authority within the State to provide for adequate facilities for instructions in the mother tongue, at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary for securing the provision of such facilities.

Unfortunately, however, despite the laudable constitutional safeguards for linguistic minorities and several measures adopted by the central and State governments in pursuance thereof, attainment of the goals underlying them remained far from satisfactory. Owing inter alia to the partisan nature of the Commissioner's appointment and non-conferment of sufficient status and powers upon him, the Commissioner failed miserably in making any impact upon the implementation of the constitutional safeguards. Although, it is not our main concern to critically examine the Commissioner role here, yet those who have the slightest familiarity with the state of implementation of these safeguards, hardly need be convinced about the validity of our assertion. In addition, the annual reports submitted by the Commissioner

year after themselves provide a very poor account of his accomplishments.²⁹

Thus reviewing the entire issue of safeguards for minorities as such, the Desai Government resolved to re-constitute the Office of the Commissioner for Linguistic Minorities through a constitutional amendment.³⁰ It was further resolved to constitute it as an independent collegial body for looking after all kinds of interests of these minorities. In accordance with their announcement of January 15th, 1978, the Government of India "constituted a Minorities Commission to safeguard the interests of religious and linguistic minorities as a step towards preserving the secular traditions, promote national integration and remove the feeling of inequality and discrimination among them."³¹ Mr. M.R. Masani, a veteran political leader and freedom fighter was appointed as the first Chairman of the Commission.

"The Commission" it was said "will provide institutional arrangements for the effective enforcement and implementation of the safeguards provided for the minorities in the Constitution, in the Central and State laws, and in

29. For instance see Report of the Commissioner for Linguistic Minorities, (New Delhi: 1972-73), pp. 4-10.

30. Recently, two separate draft Bills have been introduced in the Parliament to provide constitutional status to the two separate Commissions - the Minorities Commission and the S.C & S.T. Commission.

31. The Overseas Hindustan Time Weekly, (New Delhi), July 15th, 1978. p. 5.

Government policies and administrative schemes enunciated from time to time."³²

It was further resolved that the Commission "will comprise a chairman and two other members whose terms of office will not ordinarily exceed three years. The Officer appointed as a Special Officer in terms of Article 350(B) will be the Secretary of the Commission. The Commission has also been asked to suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the Union and State Governments. It will serve as a clearing house of information on the conditions of the minorities and make periodical reports at prescribed intervals."³³

The Commission is further required, "under the resolution to submit an annual report to the President of India, detailing its activity and recommendations. On its part, the Government will submit to Parliament the Commission's annual report together with a memorandum outlining the action taken on the recommendations and explaining the reasons for non-acceptance of the recommendations concerning the centre."³⁴

After a long spell of ineffectiveness, when the Janta Government decided to reconstitute the Office of the

32. Ibid.,

33. Ibid.,

34. Ibid.,

Linguistic Minorities as an independent Commission, it was hoped that it would be able to deliver the necessary goods. However, the recent happenings involving the Commission indicate that there has been no material change as far as the effectiveness of the newly constituted Commission is concerned. In the first week of June, 1978, i.e., well before completion of four months in his office, the Chairman, Mr. M.R. Masani announced his decision to resign from the Commission. Listing reasons for his decision to quit, Mr. Masani "accused the Government of a "breach of faith". He claimed that despite assurances to the contrary, the Government had been giving a step-motherly treatment to the Commission. The Government apparently had given it the assurance that it would bring a Bill in Parliament to give an independent status to the Commission, but the Bill had not been introduced. Masani alleged that it was being treated as an appendage of the Government even though he had sought specific assurances in advance on this score. Moreover, even three months after its appointment the Commission had yet to get a proper office accommodation. Masani claimed that he had written to the Prime Minister and the Home Minister earlier last month, but had failed to get any response."³⁵

A cursory look at the developments cited above shows that the newly born Minorities Commission has probably

35. Ibid.,

died well before its birth. The attitude of the present day Government towards this institution is not materially different from that of the former Government led by Mrs. Gandhi.

Our account of the fate of these two offices indicates that the manner in which they have been dealt with by the Government. The basic reason for our examination of the functioning of these two institutions with special reference to Government's attitude towards them is that it holds important lessons for the staunch supporters of similar kinds of institutions in India especially those of the Ombudsman institution.

Having dealt with these two special Ombudsman-like institutions, it would now appear to be appropriate to examine, in brief, the general State Ombudsman plans that are presently in operation in India.

III. IMPLEMENTATION OF STATE OMBUDSMAN PLANS:

As pointed out above, presently there are four State Ombudsman plans in operation. However, owing to unavailability of information about the Bihar State Ombudsman plan, we are compelled to confine ourself to a discussion of the remaining three plans, i.e. Maharashtra, Rajasthan and Uttar Pradesh.

THE MAHARASHTRA OMBUDSMAN PLAN:

Maharashtra, was the first Indian State to enact Ombudsman legislation - the Maharashtra - Lokayukta and Uplokayukta Act, 1971. The said Act provides for the appoint-

ment and functions of "certain authorities" for the investigation of administrative action taken by or on behalf of the Government of Maharashtra or certain public authorities in the State. The Act further aimed at creating an independent statutory mechanism for inquiring into citizens' complaints of: allegation or injustice arising out of maladministration. Mr. S.P. Kotwal, a former Chief Justice of Bombay High Court was appointed the first State Lokayukta on October 23rd, 1972. Mr. A.R. Shimpi, presently the Lokayukta, took over from Mr. Kotwal after his retirement in October, 1977. The following are some of the important provisions of the Maharashtra Act:

1. Appointment:

Section 3(1) of the Act provides that the Governor shall, by warrant under his hand and seal, appoint a Lokayukta after consultation with the Chief Justice of the High Court and the leader of the Opposition in the Legislative Assembly, or if there is no such leader, then a person elected by the Members of Opposition in the House in such manner as the Speaker may direct. Further, the Uplokayukta (i.e. the Deputy Ombudsman) shall be appointed by the Governor after consultation with the Lokayukta. Section 3(2) lays down that every person appointed as the Lokayukta or Uplokayukta shall, before entering upon his office, make and subscribe before the Governor or some person appointed in that behalf by him, an oath of affirmation: According to the First

Schedule to the Maharashtra Act, while taking the oath:

(i) he will solemnly affirm and bear faith and allegiance to the Constitution of India; and (ii) he shall perform the duties of the office without fear or favour, affection or ill-will. In order to ensure the independent and impartial dispensation of his duties the Lokayukta/Uplokayukta has been debarred from being a member of the Parliament or of the Legislature of a State. Further, the Lokayukta/Uplokayukta has also been debarred under section 10 of the Act, from holding an office of trust or profit; keeping any connection with a political party, or carrying on any business or from practising any profession.

2. FUNCTIONS:

Section 7 of the Maharashtra Act deals with the functions of the Lokayukta/Uplokayukta. The function of the Lokayukta is to investigate any action which is taken by or with approval of a Minister or a Secretary or any other public servant referred to in this Act or notified by the State Government in consultation with the Lokayukta.

The Uplokayukta may investigate any action which is taken by or with the general or specific approval of any public servant (other than a Minister), a Secretary or other public servant referred to in sub-sect(i) of Section 7. In any case, where a complaint involving a "grievance" or an "allegation" in respect of any such action is received, on receipt of such complaint, the Lokayukta or Uplokayukta

shall form an opinion as to whether or not such an action could be subject of a grievance or an allegation. The Lokayukta/Uplokayukta on being satisfied with the cause of such complaint, may conduct an investigation by the same. For reasons to be recorded in writing, the Lokayukta if he so desires may initiate an investigation of a matter falling within the jurisdiction of the Uplokayukta. Section 8 of the said Act enumerates certain areas excluded from the jurisdictions of the Lokayukta and Uplokayukta.

3. PROCEDURE FOR FILING OF COMPLAINTS:

Section 9 deals with the procedure for filing complaints with the Lokayukta and Uplokayukta. Sub-section 1 of Section 9 states that: subject to the provisions of this Act, a complaint may be made to the Lokayukta/Uplokayukta, on two grounds; namely, (a) in the case of a "grievance" by the person aggrieved, and (b) in the case of an "allegation" by any persons other than a public servant.

The term "grievance" means a claim by a person who has sustained injustice or undue hardship in consequence of mal-administration, while the word "allegation" implies any affirmation in relation to a public servant, that he:

- (i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause any undue harm or hardship to any other person;
- (ii) was actuated in the discharge of his functions by personal interest or improper or corrupt motives; or

- (iii) is guilty of corruption, or lack of integrity in his capacity as a public servant.

"Mal-administration" under the Act implies action taken or purported to have been taken in the exercise of administrative functions in any case:

- (i) where such action or the administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory; or
- (ii) where there has been negligence or undue delay in taking such action, or the administrative procedures or practice governing such action involves undue delay.

The word "action" wherever employed in the Act implies any action taken by way of a decision, recommendation or finding or any other manner. It includes failure to act and other expressions connoting action and it shall be construed accordingly.

The proviso to section 9 further provides that in the case of a deceased person or if for any reason an aggrieved person is unable to act for himself, he may be represented by his legal representative or by his authorized agent.

In case a person makes a false or malicious complaint under the Act, he shall be visited with penalty which may be either a fine or sentence.

4. PROCEDURE FOR INVESTIGATION:

Section 10 of the Act deals with the procedure to be followed in respect of investigation of such complaints. Section 10(1) empowers the Lokayukta/Uplokayukta after making

preliminary inquiry in the manner as he deems fit, to conduct any investigation on receipt of a complaint from an "aggrieved" person, or suo motu. Sub-section 2 of the above section further states, that every such investigation shall be conducted in private. Contrarily, however, for reasons to be recorded in writing, the Act also authorizes the Lokayukta or Uplokayukta to conduct investigations of definite public importance in public, if he deems it fit to do so.

Section 10(3) further states that save as aforesaid, the procedure for conducting any such investigation shall be such as the Lokayukta or Uplokayukta considers appropriate in the circumstances of the case. Thus, Lokayukta or Uplokayukta has been given wide discretion to choose the procedure, the former may find appropriate in each particular case. Three important rules, however, have been prescribed by the Act to govern such procedure. First, after the completion of the preliminary inquiry, if he decided to conduct any investigation into a complaint, he is required under section 10(i)(a) to send a copy of the complaint to the concerned public servant and the competent public authority as defined in section 2(b) and 2(c) respectively. Section 10(1)(a) also empowers the Lokayukta, after making the preliminary inquiry, to conduct any investigation on his own motion. In such a case, the Lokayukta has himself to send to the concerned public servant and the competent authority, a statement setting out the grounds therefor. Second, the

Lokayukta is required under section 10(1) (b), to afford to the public servant concerned an opportunity to offer his comments, he may make such orders as to the safe custody of documents relevant to the investigation as deems fit.

The Act also bestows upon the Lokayukta the discretion to refuse to investigate any complaint involving a grievance or an allegation, if in his opinion:

- (a) the complaint is frivolous or vexatious, or is not made in good faith; or
- (b) there are no sufficient grounds for investigating, or, as the case may be, for continuing the investigation; or
- (c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail himself of such remedies.

He is required to record his reasons for refusal to investigate such complaint and communicate the same to the complainant.

(V) TAKING OF EVIDENCE:

Lokayukta and Uplokayukta enjoy wide authority to elicit information and procuring of documents and records relevant to the investigation, from all officials and public servants - under section 11(1) and (2) of the Act. The Lokayukta and Uplokayukta also enjoy all the powers of a civil court in respect of the following:

- i) summoning and enforcing the attendance of any person and examining him on oath;
- ii) requiring the discovery and production of any document;
- iii) receiving evidence on affidavits;

- iv) requisitioning any public record or copy thereof from any court or office;
- v) issue commissions for the examination of witnesses and documents; and
- vi) such matters as may be prescribed.

No person, however, could be compelled, for the purpose of investigation under this Act, to give any document which he could not be compelled to give or produce in proceedings before a court.

VI) REPORTS:

If after investigation into a "grievance", the Lokayukta or Uplokayuka is satisfied that the action in question has resulted in injustice or undue hardships to the complainant or any other person, he is required, under section 12(1), to recommend remedial measures, by way of a report in writing, to the concerned public servant and the "competent authority". He shall also fix the time for taking necessary action at the time of making of such a report. The "competent authority" is required in turn, to inform the (Lokayukta or the Uplokayukta of the action taken in compliance with the former's report - the compliance of which must be reported within one month of the expiry of the time fixed in the report. Similarly, if the Lokayukta or the Uplokayukta finds that an "allegation" can be substantiated either wholly or partly, he is required to report in writing his recommendations along with the relevant documents, materials and other evidence to the competent authority. The "competent authority" is then required to intimate to the Lokayukta or

or Uplokayukta, within three months of the date of receipt of such report, the action taken or proposed to be taken on the report. If the Lokayukta or Uplokayukta satisfied with the action taken, he will close the case and inform the complainant, the concerned public servant and the competent authority accordingly. If he is not satisfied with the action taken on the complaint, he may make a special report to the Governor with intimation to the complainant. The Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature. The Lokayukta and Uplokayukta are required further to present annually a consolidated report on the performance of their functions to the Governor. The annual report along with explanatory memorandum, if any, is also required to be laid before each House of the State Legislature.

VII) NATURE OF THE REPORTS:

The Lokayukta/Uplokayukta enjoys no power except the power to make recommendations to the executive. In case the competent authority does not accept the advice the Lokayukta/Uplokayukta has no power except to publicize his recommendation either by way of its inclusion in his annual report or a special report to the Governor of the State. As all such reports are to be placed before each House of the State Legislature, the mass-media and the public opinion at large may in the last resort direct action to be taken on them to assuage the feelings of injustice. Thus, the ultimate

sanction lies with the people and their opinion.

THE STATES OF RAJASTHAN AND UTTAR PRADESH AND THEIR OMBUDSMAN PLANS:

Rajasthan-one of the Northern States - with a population of 25 million became the second Indian State to enact an act providing for the appointment of certain ombudsman-like authorities for the investigation of allegations against Minister's and public servants. On January 25, 1973 the Governor of the State promulgated an ordinance providing for the setting-up of certain ombudsman-type authorities in the State. Later on, the said ordinance was repeated by the Rajasthan Lokayukta and Uplokayukta Act, 1973 which came into force with effect from February 3, 1973. The Uplokayukta (who was the erstwhile Chief Vigilance Commissioner of the State) came to be sworn in on the 5th June 1973. The Lokayukta, Mr. I.D. Dua, a retired Judge of the Supreme Court of India was appointed the first Lokayukta of the State and assumed his office on 28th August of the same year.

In Uttar Pradesh (U.P.), the Uttar Pradesh Lokayukta and Uplokayukta Act, 1975 was passed by the State Legislature and finally assented to, by the President of India on September 7th, 1975. The Act came into force only towards the end of October, 1977.³⁶

³⁶. Under the Indian constitution a State Governor has three options open to him when a bill is presented before him for his assent: (i) he may assent to it; (ii) send it back to the legislature with his recommendations for purpose of reconsideration or (iii) in certain cases, send it for the consideration of the President of India. Thus in exercise of his same power, the Governor of U.P. referred this Bill to the President of India for his approval.

Before we proceed further with a discussion of the provisions of the Rajasthan and U.P. Acts, it would seem desirable to point out the fact that both the Acts draw heavily from the Maharashtra Act discussed above. Further, there seems to be a greater amount of resemblance between the provisions of the Maharashtra and U.P. Acts than the one existing between the Maharashtra and Rajasthan Acts. As a matter of fact, keeping in view the resemblance between these Acts it would be no exaggeration saying that whereas the U.P. Act is a clean photocopy of the Maharashtra Act, the Rajasthan Act is an ill-type carbon copy of the same. Hence, in view of such a high incidence of resemblance between these three Acts, having described the Maharashtra Act in detail, it hardly seems worth-while to repeat the identical provisions of the two remaining Acts. Thus it would suffice here to say that the three Acts contain, by and large, identical provisions in regard to the appointment,³⁷ removal,³⁸ term of office and other conditions of service,³⁹ matters outside jurisdictions,⁴⁰ taking of evidence,⁴¹ submission of reports,⁴² etc., of the Lokayuktas and Uplokayuktas.

37. Section 3 sub-section (1) (2) (3) of all the three Acts deal with the procedure of appointment of Lokayukta and are almost identically worded.

38. Section 6 (1) (2) (3) of the Acts deal with removal procedure.

39. Refer to section 5 (1) (2) (3) (4) (5) of the Acts.

40. Refer to section 8 (1) (2) (3) of the Acts.

41. Refer to section 11 (1) (2) of the Acts.

42. Refer to section 12 (1) (2) (3) (4) (5) (6).

One very significant point of difference among these Acts deserves to be noted. Whereas in section 9 of the Maharashtra as well as the U.P. Act - provisions relating to complaints resemble each other verbatim, section 9 of the Rajasthan Act differs from them quite a good deal. Section 9 of the Rajasthan Act which limits the role of the Lokayukta and Uplokayukta to investigation of allegation only as against the same section of the Maharashtra and U.P. Acts under which such officials can investigate the complaints involving both, the cases of "allegation" as well as "grievance". It would thus seem appropriate here to deal with section 9 of the three Acts at a somewhat greater length. Sections 9(1) of the Maharashtra and U.P. Act which are absolutely identically worded provide that:

Subject to the provisions of this Act,
a complaint may be made under this
Act to the Lokayukta or Uplokayukta

- (a) in the case of a grievance, by any person aggrieved; and
- (b) in the case of an allegation, by any persons other than a public servant.... 43

The afore-mentioned provisions contained in the Maharashtra Act and Uttar Pradesh Act imply two important things: (1) the two Acts envisage a much wider role for the Lokayuktas and Uplokayuktas, than that of mere grievance handling officials, being empowered to investigate the complaints of allegation or cases involving corruption or misuse of authority on the part of the public servants, these

43. The proviso to the sections and remaining five sections of the three Acts are more or less identically worded.

officials are much more than Swedish Ombudsman like official. Secondly, that whereas, in the case of complaints of grievance every one including the public servant has the right to complain, in the case of complaints of allegation only persons other than the public servants have the right to do so. As different from this, the section 9(1) of the Rajasthan Act confers the right to complain only on persons other than the public servants and only in respect of cases involving complaints of allegation, thus, reducing the role of the authorities appointed under it to mere agencies for investigating cases of corruption, etc., on the part of public servants. The officials appointed under the Rajasthan Act, do not quite fit into our definition of the Ombudsman - as a grievance handling mechanism as outlined in the first chapter.

Having discussed the provisions of the three State Ombudsman Acts of India and compared and contrasted them, through it is not the main purpose of our thesis to evaluate the functioning of these State Ombudsman plans yet, a brief attempt shall be made by us to evaluate their functioning in general and the Rajasthan plan in particular.⁴⁴ Such a broad

44. For want of adequate information regarding the functioning of the Offices of Lokayukta and Uplokayukta, it was not possible to undertake a detailed examination of their working. The assessment of U.P. offices was not possible for the simple reason that the U.P. functionaries have not even completed one year in their office. Rajasthan being the State to which the author himself belongs and about whose offices a couple of Annual Reports of these functionaries were available, a somewhat detailed examination of the functioning of these officials could be possible.

attempt at evaluating the State Ombudsman plans is essential as it might hold out important lessons for the formulation and implementation of such a plan at the central level.

The most significant fact regarding the existing State Ombudsman plans is that each one of the States in which the plan has been set up has a population of little over 25 million with Maharashtra little over 50 million and U.P. a population of little over 88 million. Obviously enough, these population figures while compared even with the population of Sweden - the largest Scandinavian country - appear to be rather appalling. Thus in a situation where the Ombudsman institution has undergone. Metamorphosis in small countries like Sweden and New Zealand (from one man institutions to collegial bodies), how far these two men plans successfully cope with the complaints of such vast populations hardly requires any in-dept analysis. Moreover, the assignment of additional responsibility to the two State officials for the investigation of complaints involving allegation - which they are inherently incapable of dealing with, has increased their task greatly.

The two basic causes stated above, coupled with very little publicity given to these institutions, and consequent unawareness among masses about them, were enough to render them ineffective. However, two additional factors - the lack of strong democratic tradition in the country and the declaration of national emergency in June, 1975, prevented

these officials from evoking sufficient popular confidence in themselves. Thus it would not be an exaggeration to say that the State Ombudsman plans in India were born under very inauspicious circumstances. Even before the people became aware of their existence, three of these offices had been rendered superfluous. In the period of emergency during which even the authority of constitutionally established bodies like the High Courts was openly flouted one can imagine the fate of these newly born institutions.

One would have expected these Ombudsmen institutions to come into limelight in the post-emergency era but unfortunately their roles were further eclipsed on account of the appointment of a number of Commissions of Inquiry appointed both by the Government of India and the various State Governments. Because of wide publicity given to the appointment of such Commissions of Inquiry and their terms of reference by the mass-media a vast majority of the people preferred to refer their complaints to them rather than to the State Ombudsmen. Besides, to those who were aware of the existence of State Ombudsmen offices the sense of utter helplessness with which these officials watched what was going on during the emergency was sufficient to deter such people from approaching these authorities with their complaints.

AN EVALUATION OF THE OFFICES OF OMBUDSMEN IN RAJASTHAN

Before we proceed further with the evaluation of the Office of the Lokayuka and Uplokayukta of Rajasthan State

STATEMENT SHOWING THE DISPOSAL OF CASES BY THE LOKAYUKTA
RAJASTHAN DURING 1973-74 and 1975-76

	1973-74	1974-75	1975-76
1. Total Number of Complaints Received	1,782**	1,182	1,246
2. Filed After Initial Scrutiny	1,378	798	678
3. Affidavits Called For	404	385*	354
4. Considered for Parliamentary Investigation	56	342**	354
5. Disciplinary or Corrective Actions Recommended	---	---	8***
6. Further Investigation Done	54	188	240
7. Referred to the Dept/ Agency Concerned	---	39	---
8. Filed After Investigation	11	---	89
9. Pending at the End of the year	384	145	365

* 197 did not submit the affidavits

** 114 did not submit the affidavits despite repeated numbers

*** These also include cases handled by the Uplokayukta who eventually resigned in 1974.

**** 4 Public Servants escaped punishment because of their retirement before the conclusion of investigations.

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it would deem necessary to point out that the evaluation being attempted below is of a very broad nature and that it is based partly on the first three reports of the office as well as general observations about its functioning in the State.

At the very outset two broad generalizations need to be made. First, that the effective functioning of the offices of the Lokayukta and Uplokayukta of Rajasthan has been largely hindered on account of the cumbersome and hurriedly enacted legislation under which the office has been established. Second, lack of adequate support from the State Government and their negative outlook towards these officials has also been equally detrimental to the smooth and effective exercise of their duties under the Act. Consequently, the functioning of these authorities has neither succeeded in inculcating the popular confidence in themselves nor in making any strong impact on the operations of the State administration. The conclusions would be largely borne out by the facts analyzed below.

TABLE 2:1

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*** These also include cases handled by the Uplokayukta who eventually resigned in 1974.

**** 4 Public Servants escaped punishment because of their retirement before the conclusion of investigations.

Table 2:1 shows the entire position in regard to the registration and disposal of complaints under the Rajasthan Lokayukta and Uplokayukta Act, 1973. The data contained in the table show that the maximum number of complaints 1,782, were registered during the first 9 month period of 1973-74. The number of complaints showed a perceptible decline in the following year when these numbered 1,182 during the entire twelve month period. During the third year i.e. 1975-76 the number of complaints did indicate an increase over the ones registered during the immediately preceeding year, but their number was much too low in comparison to those registered by the Lokayukta and Uplokayukta during the 9 month period of operation of the Act during 1973-74.* This phenomenal decrease in the case-load of these authorities during the two years following the first nine months after their inaguration, was supposedly on account of the clash that took place between the two persons occupying the two offices of the Lokayukta and Uplokayukta. A cursory reading of the first report of the Lokayukta and Uplokayukta of Rajasthan clearly suggests that far from being a clash of personalities, the conflict between the Lokayukta and Uplokayukta had its roots, in part, in the way the legislation was enacted, and in part, also in the manner in which the State Government initiated its implementation.⁴⁵

45. Refer to Rajasthan, Rajasthan Ke Lokayukta Vah Uplokayukta Ka Varsik Samakit Prativedan Consolidated Annual Report of the Lokayukta of Rajasthan (Jaipur: 1973), pp.24-34.

* Registration of an average of 700 hundred complaints during 1976-77 and 1977-78 while compared with the number of complaints lodged by the residents of the State to the Shah Commission and other Commissions of Inquiry goes to establish the fact that the performance of the State administration had not improved during the subsequent years rather it had considerably declined.

Unfortunately, for the State of Rajasthan, the proviso to section 3 of the Act provided that "the first Uplokayukta shall be the person holding the Office of Vigilance Commissioner immediately before the commencement of this Act," led to the whole trouble in this behalf. The facts of the situation in regard to the conflict between the Lokayukta and the Uplokayukta may be broadly narrated as follows. The aforementioned provision of the Rajasthan Act was basically intended to facilitate the abolition of the erstwhile organization of the Vigilance Commission and utilization of the services and experience of the then Vigilance Commissioner in organizing the new set up envisaged under the Act. Unfortunately enough, on account of lack of proper thinking on the part of the State Government in this regard, the ball was set rolling with the swearing in of the Uplokayukta on the 5th June, 1973. The said functionary, after having assumed his office finished most of the spade work in regard to organizing the Secretariat of the new organization and selection of necessary staff, etc., before the Lokayukta assumed his office on the 28th August, 1973.

A reading of the first report, especially the portions wherein both the Lokayukta as well as the Uplokayukta have attempted to explain the respective stands taken by each one of them leads one to draw the following conclusions. On first, that the decision of the State Government to have the Office of the State Vigilance Commission abolished merely by appointing the Vigilance Commissioner as the Uplokayukta without any

regard to important matters such as disposal of its pending case-load, proved to be fatal for the future of this newly born organization. Second, the decision of the State Government to allow complete freedom to the Uplokayukta in matters like appointment, etc., of the staff of the new organization before the appointment of the Lokayukta who is supposed to be the administrative head of the new organization amounted to a serious blunder on their part.

The sequence of events that followed shows that presumably, having functioned like a 'master of his own kingdom' for a short while, the Uplokayukta got so much used to it, that at a later date, he found it difficult to work even in collaboration with somebody else. The Secretary to the Lokayukta and Uplokayukta, who probably was a hand picked man of the Uplokayukta started bypassing the Lokayukta with the full connivance of the former even in regard to disposal of complaints.

The conflict, it appears reached its ugly climax with the transfer of the Secretary - an Indian Administrative Service man, by the State Government, at the behest of the Lokayukta. The situation ultimately reached a point where the Uplokayukta was left with no option but to resign, following the refusal of his request by the State Government in regard to the amendment of section 9 of the Act. The Lokayukta felt that in view of the attitude of the State Government towards amendment of section 9 on the lines of the

Maharashtra Act, there was not enough work for him and thus he should better quit. The Uplokayukta tendered his resignation sometime in April, 1974 but the resignation was finally accepted by the Governor on 25th June, 1974. Thus, the office of the Uplokayukta which became vacant on 25th June, 1974 has been lying vacant since then despite, repeated requests on the part of the Lokayukta to have it filled.

The fact of all this having been reported by the local media widely, made the situation in this behalf, from bad to worse. Such an unfortunate beginning had obviously to have its repercussions for the future of a newly born Organization. For those who were aware of the creation of these offices and what went inside them within the first few months, the former had lost everything without having had a chance to gain anything worthwhile. The registration of 1,182 complaints - indicating a decrease of 600 in simple numerical terms and much more in terms of real proportion, over a course of 12 months is a sufficient indication of this fact. Nevertheless, popular memory being short lived, but for the peristent efforts on the part of the State Government to reduce these offices to nothing, situation could have probably improved with the passage of time. But unfortunately this was perhaps not to be. The annual reports of the Lokayukta, year after year, contain some information which clearly points out how negative and

uncooperative has been the overall attitude of the State Government towards these offices. Thus, non-acceptance of the advice of the Lokayukta on petty matters like sanction of a vehicle⁴⁶ to his office for undertaking necessary inspection tours; somewhat important matters like placing all grievance handling mechanisms in the State under his supervision;⁴⁷ review of the Act for improvement of this institution⁴⁸ amply proves the uncooperative and negative attitude of the State Government towards these offices. Besides, confining the role of these functionaries to complaints of allegation (to the complete exclusion of cases of public grievance); lack of proper amount of publicity to these offices;⁴⁹ exclusion of the Chief Minister from their jurisdiction, coupled with the withholding of the appointment of the Uplokayukta⁵⁰ have also contributed in considerable measure towards rendering the functioning of these authorities ineffective.

Further, the cumbersome nature of the Act has also been mainly responsible for preventing actual disposal of complaints in a fairly large number of cases. Row - 3 of the table 2:1 shows in how large a number of cases, affidavits

46. See the second Annual Report of the Lokayukta (Jaipur: 1975-76), pp. 20-22.

47. Ibid., See in particular p. 6 and p. 20 of the report.

48. Ibid., Refer to p. 5.

49. Ibid., Refer to p. 3.

50. Ibid., p. 3

from the complainants have to be called for and how many* cases are not investigated only for want of the necessary affidavits, etc. This provision of the Act, which besides introducing an enormous element of formalism and killing the much too needed element of informality in the operation of the institution has also rendered it largely inappropriate for use by the common-man.

The long and somewhat detailed historical account of the functioning of the all-India and State level Ombudsman like organizations shows how rough a deal such institutions have got at the hands of the Governments on account of absence of strong democratic traditions and a vigilant public and public opinion. Hence, the question as to "how suitable or effective the proposed office of the Lokpal at the national or central level would be?" should be examined against the fore-going historical background.

* See footnotes to the table 2:1

CHAPTER THREE

THE INDIAN PARLIAMENT, The ARC AND THE UNION GOVERNMENT: THEIR ROLE IN THE IMPLEMENTATION OF AN OMBUDSMAN PLAN

In this chapter we intend to critically examine the role played by the Indian Parliament; the ARC and the Union Government respectively, in the implementation of a national or central Ombudsman plan.

THE ROLE OF THE PARLIAMENT

On 3rd April, 1963, when the demands (estimates) for the grants of the Law Ministry were being debated in the Lok Sabha (the House of the People), Dr. L.M. Singhvi an M.P., emphasizing the need for setting up an Ombudsman-like grievance mechanism, held:

That the Institution of Ombudsman would enable the citizen to effectively ventilate his grievances; that the question hour in Parliament and writing letters to Ministers are no substitute for it; that the available juridical remedy is not adequate as the courts are hide-bound by limitations of procedure and technicalities; that through it Parliament would effectively function in individual cases; and that it would ensure independent, impartial justice in matters of administrative excesses in individual cases.¹

Replying to Dr. Singhvi's proposal for the setting up of an Ombudsman-like mechanism in India, Mr. A.K. Sen,

1. India, Lok Sabha Debate (Hereinafter referred to as L.S. Deb.), 3rd Series, Vol. XVI, cc. 7556-58 and 7589-93.

then the Law Minister of India expressed the view that the question of how effectively could an Ombudsman function under the Indian federal set-up deserved serious study; and that conferring a constitutional status parallel to those of the Election Commission and the comptroller and Auditor General was essential to make such an official effective.

However, since no serious thought and consideration was given by the Union Government to the problem of citizens grievances, Dr. Singhvi, once again raised the issue in the Lok Sabha in April, 1964. Pointing out the fact that the assurance of the Union Government to have the question of evolving suitable machinery for the redress of citizens' grievances examined had not been made good, Dr. Singhvi moved a resolution in the House for setting up an Ombudsman-type institution. The resolution sought to elicit the opinion of the House that:

An Officer of Parliament is to be known as the People's Procuration (Lokayukta), broadly analogous to the institution of Ombudsman in Sweden, Denmark and New Zealand, be appointed under suitable legislation, for the purpose of providing effective and impartial investigation machinery for public grievances, for eradication corruption at all levels, for redressing administrative wrongs and excesses, for securing the liberties of citizens, and generally for strengthening the basic foundations of Parliamentary democracy as a system of Government.²

The resolution referred to above was discussed in the Lok Sabha (The House of the People) on April 3rd and 22nd, 1964. During the debate, almost all sections of the House

2.. For full text of the Resolution see Annexure 1.

favoured the idea underlying the resolution. In fact, even the then Minister of State in the Ministry of Home Affairs also agreed with the basic objective of having effective machinery for the redress of citizens grievances enshrined in the resolution. Although expressing doubts about the feasibility of the Ombudsman institution in India, the Minister of State assured the House that the Government appreciated and sympathised with the principle underlying the resolution and it would have the matter investigated with a view to devising suitable machinery to achieve the desired objective.³

Taking strong offence to the failure on the part of the government to create a suitable machinery, Dr. Singhvi moved another resolution for constituting a Committee of M.P.'s to examine the form and feasibility of suitable machinery for redress of citizens' grievances including that of the Ombudsman institution.⁴ As on the previous occasion, Dr. Singhvi once again received very wide support from almost all the members of the House participating in the debate. The then Minister of State in the Ministry of Home Affairs, while replying on behalf of the Government, said that though the Government had no intention of indefinitely

3. L.S. Deb., 3rd Series vol. XXIX, cc 9163-72, vol. XXX, cc. 12356-12416, and Rajya Sabha Debate (R.S. Deb.), vol. XLXII, c. 677.

4. L.S. Deb., 3rd Series, vol. XLII, c. 10838. See also Diwan Chaman Lal starred question and the reply thereto of the Minister of Home Affairs; R.S. Deb., vol. LI, cc. 3219-20, (12.3.65) and Shri Tengari and Others starred question and Minister of Home Affairs reply thereto. R.S. Deb., Vol. LIV, cc. 4575-76 (10.12.1965).

postponing the setting up of suitable machinery, the Government could not accept the resolution as: (i) a Special Consultative Group of the M.P.'s had already been appointed to look into this matter; and (ii) the Committee on Prevention of Corruption had already made its recommendation in this behalf.

Before, however, the said Consultative Group of M.P.'s could finish its task and submit its report (as has already been pointed out in the first chapter), the Government of India resolved to set up a high-powered Hoover-type Commission on Administrative Reforms. Appointed on 5th January, 1966, the Administrative Reforms Commission (ARC) was entrusted inter alia with the task of recommending suitable machinery for the redress of citizens' grievances. As pointed out in the first chapter, the ARC made a very strong recommendation for the setting up of Ombudsman-like institutions both at the Centre as well as in the States, (we shall discuss the recommendations of ARC in detail somewhat later on in this chapter). On receiving the ARC's interim report on the "Machinery for Redress of Citizens' Grievances" on 20th October, 1966, the Government of India accepted the recommendations contained therein principle.

After accepting the recommendations of the ARC, in principle, the Government of India initiated no immediate steps towards their implementation. An effort was then made through a Private Member's Resolution to draw the attention of the Government towards the urgency of enactment

of legislation on the subject. The said resolution, moved by Mr. Sinhasan Singh, M.P., was discussed in the Lok Sabha on November 10th and 25th, 1966, respectively. The resolution was withdrawn by Mr. Singh following an assurance by the Minister for Home Affairs that the Government had no intention of delaying action in this behalf; that serious consideration was being given to it by the Government and the reactions of the State Government were also awaited in this respect.⁶

Realizing that more than a year's time had elapsed after the submission of the ARC report, and the Government of India did not come up even with draft legislation for setting up the proposed institutions of the Lokpal and Lokayukta, Mr. P.K. Deo, M.P., introduced a (Private Member's) Bill in the Lok Sabha on 16th November, 1967. Mr. Deo's Bill was more or less copied from the draft bill of the ARC. As the draft bill introduced by Mr. Deo involved financial implications, its initiation required the prior approval of the President of India which in effect meant the prior approval of the Cabinet. The said bill was thus referred to the President for his approval which never came forth. Realizing this, Mr. Deo on 1st December 1967, moved the proposal that the bill be circulated for the purpose of eliciting public opinion thereon. Opposing Mr. Deo's move, the then Minister for Home Affairs stated that though only ten State Governments had sent their replies,

6. L.S. Deb., 3rd Series, vol. LXI, cc. 5775-80.

of which some had not agreed with the proposed scheme yet, the Government did not want to delay the setting up of a central Ombudsman institution and would bring forward legislation for that purpose without waiting for evolving of a consensus about it among the States.⁷ The Minister of Home Affairs assurance in this behalf notwithstanding, the House voted the Bill so as to elicit public opinion on it.

In the meantime, however, the Government of India introduced the Lokpal and Lokayukta Bill, 1968, in the Lok Sabha, on 9th May, 1968 providing for the appointment of the Lokpal and Lokayukta at the centre.⁸ The said Bill, which was a modified version of the Lokpal and Lokayukta Bill, proposed by the ARC in 1966, was referred to a Joint Select Committee of both Houses of the Parliament immediately after its introduction in the Lok Sabha. The Joint Select Committee submitted their report on March 21st, 1969. While accepting the basic institutional framework envisaged under the Bill, the Joint Select Committee proposed certain changes in some of the provisions contained in the Bill.

The Bill was revised in the light of the Joint Select Committee's recommendations and was introduced again in the Lok Sabha as the Lokpal and Lokayukta Bill, 1969.

7. L.S. Deb., 4th Series, Vol. X, cc. 4372-74

8. For details regarding the 1968 Bill and a critical examination thereof see M.P. Jain, Lokpal: Ombudsman in India (New Delhi: Academic Books Ltd., 1970) pp. 158-184.

The Bill, however could not get through the Fourth Parliament in spite of its passage by the Lok Sabha on 20th August, 1969, following the dissolution of the House by the President of India in December, 1970. With some very minor modifications, the Bill was again introduced in the Lok Sabha (of the Fifth Parliament) as the Lokpal and Lokayukta Bill, 1971 on 11th August, 1971., but could not be passed, apparently on account of the outbreak of armed conflict with Pakistan. Subsequently, with the emergence of Mrs. Gandhi as a "National Hero" out of the armed conflict with Pakistan (and consequent creation of Bangladesh as an independent nation), the popular out-cry against corruption and madadministration receded into the background for a while. After the declaration of National Emergency in June 1975 and what ensued thereunder, any consideration of the issue of citizens grievances was out of question.

Nonetheless, revival of Indian Democracy following the end of Mrs. Gandhi's tyrannical rule, the issue for setting up the Office of the Lokpal was once again revived. The present ruling party, which had promised the appointment of Ombudsman-type authorities to the electorate as part of its election manifesto brought up a new draft bill - the Lokpal Bill, 1977 which was introduced in the Lok Sabha on 28 July, 1977. The Bill was referred once again to the Joint Select Committee of both the Houses whose report was

submitted on 29th July, 1978.

The preceeding narrative of the history of Ombudsman draft legislation at the national/central level establishes the fact beyond doubt that unlike Parliamentarians elsewhere, the Indian parliamentarians have evinced a tremendous amount of interest in the setting up of Ombudsman-like organizations. They have, on the whole, never witnessed any hostility towards the idea of establishment of such organizations, nor have they ever regarded it as some kind of a threat to their role as the watch-dog of the interests of their constituents. In fact, unlike their Canadian, British or even American counterparts, they have always regarded the Ombudsman like institution as their best possible ally in jealously guarding the peoples' interests against bureaucratic excesses and bureaucratic malfunctioning.

THE ARC REPORT: ITS MAIN RECOMMENDATIONS

In their interim Report on the "Machinery for Redress of Citizens' Grievances" submitted to the then Prime Minister on the 20th October, 1966, the ARC expressed the unanimous view that "Our study of the institution of Ombudsman in Scandinavian countries and of the Parliamentary Commissioner in New Zealand, and of the working of these functionaries convinces us that we can suitably adopt these institutions for our needs.... We, therefore, visualize an Ombudsman-type of institution not only as justified by the

study of the past but also as a safeguard for the future."⁹

After having carefully considered the various kinds of political, legal, constitutional, geographic and demographic snags¹⁰ involved in the adoption of the Ombudsman institution in India, the ARC firmly held that:

... the special circumstances relating to our country can be fully met by providing for two special institutions for the redress of citizens' grievances. There should be one authority dealing with the complaints against the administrative acts of Ministers and Secretaries to the Government at the Centre and in the States. There should be another authority in each State and at the Centre for dealing with complaints against the administrative acts of other officials. All these authorities should be independent of the executive as well as the legislature and the judiciary.¹¹

"We suggest", the ARC said, "that the authority dealing with complaints against Ministers and Secretaries to the Government may be designated "Lokpal" and other authorities at the Centre and States empowered to deal with complaints against other officials may be designated "Lokayukta".¹² The institutions of Lokpal and Lokayukta be characterized by the following features: they should be

9. ARC Report. Op.cit., p.9.

10. For Details regarding these snags refer to para. 17, pp. 13-15. Ibid.

11. Ibid., p. 18.

12. Ibid., p. 19.

demonstrably independent and impartial; their investigations and procedures should be conducted in private and should be informal in character; their appointment should as far as possible, be non-political, their status should compare with the highest judicial functionaries in the country; they should deal with matters in the discretionary field involving acts of injustice, corruption or favouritism; their proceedings shall not be subject to judicial interference and they should have the maximum latitude and powers in obtaining information relevant to their duties; and they should not look forward to any benefit or pecuniary advantage from the executive Government.

Thus, keeping in view the essential features prescribed by them, the ARC made detailed recommendations about the appointment, powers and functions of the Lokpal with the suggestion that the same be applied mutatis mutandis to the Lokayukta. The following are some of the important recommendations of the ARC in regard to the Lokpal.

APPOINTMENT AND CONDITIONS OF SERVICE¹³

The Lokpal would be appointed by the President on the advice of the Prime Minister, which should be tendered by him after consultation with the Chief Justice of India and the Leader of the Opposition. If there were no such leader, the Prime Minister would consult a person elected by the Members of the Opposition in the Lok Sabha, for this purpose, in accordance with the manner prescribed by the Speaker.

13. Ibid., p. 20 (paraphrased)

The Lokpal would have the same status as the Chief Justice of India. His term of office would be five years subject to eligibility for reappointment for one more term. He could resign his office by writing to the President, but could not be removed from his office except in accordance with the manner prescribed in the Indian Constitution for the removal of a Judge of the Supreme Court. His salary emoluments and other conditions of service would be analogous to those of the Chief Justice of India. On appointment as Lokpal, a person would have to cease being a Member of any Legislature; holding any post or office of profit in or outside of Government, being a member of a political party or be connected with any business activities. After his retirement from the post of Lokpal a person would also become ineligible for any appointment under the Government or in a Government undertaking.

The Lokpal would have the freedom to choose his own staff, but their number, categories and conditions of service, etc., would be subject to the approval of the Government. His budget would, however, be subject only to control of the Parliament.

THE JURISDICTION OF THE LOKPAL¹⁴

In regard to the Lokpal's jurisdiction, the ARC said that subject to certain exceptions prescribed by them,¹⁵

14. Ibid., pp. 20-21. (paraphrased)

15. Ibid., para. 29, pp. 21-22.

...the Lokpal will have the power to investigate an administrative act done by or with the approval of a Minister or Secretary to the Government at the Centre or in the State, if a complaint is made against such an act by a person who is affected by it and who claims to have suffered an injustice on that account. (In this context, an act would include a failure to take action). He may in his discretion inquire into a complaint of maladministration involving not only an act of injustice but also an allegation of favouritism to any person (including a corporation) or of the accrual of personal benefit or gain to the administrative authority responsible for the act, namely, a Minister or Secretary to the Government at the Centre or in the States. In addition to making investigations on the basis of complaints received by him, the Lokpal may also suo motu investigate administrative acts of the types described above, which may come to his notice otherwise than through a complaint of an adversely affected person.

PROCEDURE FOR DEALING WITH THE COMPLAINTS¹⁶

Detailing the procedure to be followed by the Lokpal while dealing with the complaints, the ARC recommended that, on receipt of a complaint the Lokpal would scrutinize it and come to a conclusion as to whether or not he has jurisdiction to deal with it and whether or not the complaint is worth investigation. If his decision be negative on either of the two points, he would reject the complaint and inform the complainant of his decision. In case, however, of his decision to investigate it, he would to begin with, communicate the complaint to the relevant administrative

16. Ibid., pp. 22-23 (paraphrased).

authority and invite its comments thereon. At such a point the administration would have ample opportunity to either justify its actions or admit its mistake and rectify it. On receipt of the administration's response the Lokpal would further have to take a decision as to the actionability of the complaint or inform the complainant of the corrective measures initiated by the administration to rectify the wrong action on its part. The Lokpal would also be obliged to inform the complainants in case, on being satisfied by the reply of the administration, he decided not to take any further action. In cases wherein he decided to go ahead with the investigation, if the Lokpal were satisfied on its completion that there were no real cause for a grievance, he would inform the complainant of his decision and close the case. However, if he felt that the complaint was justified, he would recommend the necessary corrective measure when it was possible for him to do so. In case of acceptance of his recommendation the case would be closed. But in a case where his recommendation was turned down he would have the option to make a report to that effect to the Prime Minister or the Chief Minister of the State as the case may be. The Prime Minister or the Chief Minister, to whom such a report would be made by the Lokpal would be obliged to inform the Lokpal of action taken on his report within two months. In case the Lokpal felt dissatisfied with the action taken, it would be open to him to bring such matter to the notice of the

Parliament or the State Legislature as the case may be, through an ad hoc report or through the annual report. The administration's explanation in its defence would also be brought out in the report. If, however, as a result of his investigation of any case or cases, the Lokpal felt that an amendment of the law would be necessary to remedy the situation, he could make a recommendation to that effect to the Prime Minister or the Chief Minister as the case may be. The foregoing procedure would apply mutatis mutandis to investigations taken up suo motu by the Lokpal.

POWERS FOR CARRYING OUT LOKPAL'S FUNCTIONS:¹⁷

As far as the powers of the Lokpal to carry out his functions were concerned, the Lokpal would enjoy the powers of a court in matters such as calling of witnesses, documents, etc., No privilege except on the grounds of security of the State and foreign relations would be claimed for any information which might be available with a government or subordinate authority, in case such information is deemed necessary by the Lokpal for his investigations. However, it was expected at the same time that the procedure employed by the Lokpal would be very informal and such occasions when he had to exercise the powers of a court shall be minimal. The investigations would be conducted by the Lokpal in private. Nothing relating to such investigations would be published or caused to be published by him until the inquiry was completed and his findings were communicated

17. Ibid., pp. 23-24. (paraphrased)

to the complainant, or to the Legislature.

At the end of their report, the ARC appended a Draft Bill - the Lokpal and Lokayukta Bill, 1966 which according to them could be suitably adopted for facilitating the appointment and functions of the office of Lokayukta.¹⁸

The submission of the ARC Report on the Machinery for Redress of Citizens' Grievances generated an unprecedented amount of interest in the subject among different sections of the Indian society. The basic idea underlying the ARC's Report as well as the specific conditions contained therein, aroused on the part of the academics, lawyers and politicians an immense discussion which was widely commented and reported upon. In fact, for a while it appeared as if the ARC had succeeded in generating an Ombudsman movement in the country. In fact the ARC Report together with its Draft Bill did serve as a basis or a model for the Ombudsman draft bills prepared by the Government of India as well as Ombudsmen enactments at the State level.¹⁹ The Report ultimately did succeed in facilitating the establishment of four Ombudsman-type offices in the four Indian States. Unfortunately, how-

18. Ibid., Annexure, pp. 26-34

19. In fact, besides the four Indian States mentioned above, in two more States, Orissa and Madhya Pradesh, Ombudsman legislation were enacted a long time ago but the appointment of such authorities is yet to be made.

ever, the movement thus generated came almost to a standstill soon after the commencement of the present decade.

Having been interrupted by two major crises, one external (i.e. the armed conflict with Pakistan in the late 1971), and one internal (i.e. the Declaration of National Emergency by Mrs. Gandhi in June, 1975), the movement seemed to have been revived once again with the introduction of Lokpal Bill, 1977 in the Lok Sabha in July, 1977 and enforcement of Uttar Pradesh Lokayukta and Uplokyukta Act, 1975 in October, 1977.

Nevertheless, it would seem neither possible nor desirable here to critically examine the basic idea underlying the ARC Report or their Draft Bill. The fact that the basic idea underlying the said Report was accepted by the Government of India immediately after its submission and that the present Janta Government also continues to accept it, allows us some leverage to postpone its critical examination up to a later stage. Further, the fact that the portion of the ARC Report in regard to the central level together with their Draft Bill was never acted upon and simply continued to serve as a basis of the revised bills on the subject (i.e. the Lokpal and Lokayukta Bill, 1968; Lokpal and Lokayukta Bill, 1969; and the Lokpal Bill 1971), it would be more appropriate for us to examine only the Lokpal and Lokayukta Bill, 1971. Additionally, for the

simple reason that the Lokpal and Lokayukta Bill, 1971 reflects the latest thinking of the Mrs. Gandhi led Congress Government on the subject (which was never commented upon), and the Lokpal Bill the thinking of the Janta Government, a comparative account of the two bills would appear to be more worthwhile.

THE ROLE OF THE GOVERNMENT OF INDIA

The history of the Ombudsman institution narrated in the first chapter read with the brief history of draft bills on the subject dealt within this chapter clearly establishes the fact that all along there has been a very subtle effort on the part of the Union Government to avoid enactment of Ombudsman legislation. Right from the presentation of the ARC report and Draft Bill to the Prime Minister on the 20th October, 1966, to the tabling of the Lokpal Bill, 1977 on July 28th, 1977, it seems that the Union Executive have never been honest in their intentions in regard to the setting up of an Ombudsman-like mechanism. Although every time the people of India have been given to believe that establishment of such an institution is immediately in sight, every time the hope has been belied. In fact, it would be no exaggeration to say that the executive at the Central level - whether led by one political party or another - have always used the assurance to set up an Ombudsman's office as a political device of great significance to peacefully suppress the public outcry against mal-

administration as and when it became prominent. The assurance on the part of the Union Executive to have such an office set up "at an early date" probably saved the Government from major political upheavals.

Hundreds of drafts of legislative proposals are prepared by the Indian bureaucracy every year, and almost all of them become laws shortly after their introduction in the Parliament. Thus it would not have been difficult for the Executive to have one more law enacted. It is a real shame for the Indian administrative system to have failed to get a law on the subject enacted and enforced for such a long time. Surprisingly, enough, as many as half a dozen²⁰ draft bills on the Ombudsman have been formulated, five times these have been introduced in the Lok Sabha and twice referred to the Joint Select Committee of the two Houses of the Parliament, but no central/national Ombudsman plan seems to be near implementation even in the foreseeable future. This state of affairs in regard to the Ombudsman plan, clearly shows the extent of seriousness on the part of the Government about putting such a plan into action.

Hence, in regard to the implementation of the national/central Ombudsman plan, we have no option but to critically analyze the provisions contained in the two latest draft bills on the subject referred to above. This is what is attempted below.

20. These half dozen bills also include one bill moved by a Private Member.

THE LOKPAL AND LOKAYUKTA BILL, 1971

Based broadly upon the recommendations of the ARC, the Government of India introduced on August 11th, 1971 a bill in the Lok Sabha - the Lokpal and Lokayukta Bill, 1971. Even a cursory reading of the Bill shows that, to a very large extent, it followed the provisions of the Bill on the subject proposed by the ARC and the two subsequent Government bills of 1968 and 1969 except for certain major and minor modifications. In the main, the 1971 Bill contained the following major deviations from the ARC's recommendations and its draft bill of 1966 on the subject. First, as against the recommendations of the ARC to have both Central and State Ministers and Secretaries included within the jurisdiction of the Lokpal, the draft bills restrict his purview to Ministers and Secretaries at the Central level only. Second; the provisions of the 1971 Bill are much more comprehensive in comparison to the ARC Bill in as much as they provide for detailed provisions in respect of both the Lokpal and the Lokayukta(s). The ARC draft bill confined itself to making detailed provisions for the Lokpal while leaving the provisions in respect of Lokayukta to be worked out later. Third, whereas the jurisdiction of the Lokpal and Lokayukta under the ARC Bill was to extend to the whole of India, under the 1971 Bill the jurisdiction of these authorities was extended to public servants serving even outside of India. Four, whereas the Lokpal was made eligible

for re-appointment for a term of five years, according to the ARC report, the 1971 Bill made both the Lokpal and the Lokayukta ineligible for re-appointment altogether.

Having discussed some of the major differences between the recommendation of the ARC and the provisions of the Lokpal and Lokayukta Bill, 1971 we intend to critically examine below the provisions of the 1971 Bill.

The 1971 Bill provided for the appointment of a Lokpal and one or more Lokayukta(s). They were both to be appointed by the President by warrant under his hand and seal.²¹ The Lokpal was to be so appointed after consultation with the Chief Justice of India and the leader of the Opposition in the Lok Sabha. In case, however, there was no such leader, a person elected by the members of the Opposition in such manner as the Speaker might direct, would be consulted for this purpose.²² The Lokayukta or Lokayuktas were to be appointed after consultation with the Lokpal.²³

The above procedure of appointment of these authorities suffered from a number of defects. First, the procedure of appointment prescribed under the Bill was not in keeping with the concept of Ombudsman as the representative of the Legislature: (a) because the power to appoint these authorities was vested in the President which (under a parliamentary form of Government) in effect means the Prime

21. Section 3(1).

22. Section 3(1)(a).

23. Section 3(1)(b).

Minister; and (b) it completely eliminates the Rajya Sabha (Council of States) from the process of appointment. Second, the procedure recommended was too cumbersome to facilitate a smooth process of appointment of these authorities. Given the kind of political atmosphere that mostly pervaded the Indian political systems, it would seem extremely unlikely that in the absence of a well recognized Opposition leader, the Opposition parties could ever come to an agreement regarding a leader who would represent them in this behalf. But even if we assumed, just for its own sake, that such an agreement would be possible among all the Opposition parties representing diverse ideologies, it would seem nigh impossible for the Prime Minister and the leader of the Opposition to evolve a consensus about the name of the person to be appointed as the Lokpal. Third, in the procedure of appointment under the Bill, the leader of Opposition would have no role whatsoever, as far as the appointment of the Lokayukta is concerned. Pure and simple he would be a person of the choice of the Prime Minister in the first place. Appointment of the Lokayukta by the President not in consultation with the Lokpal but just after consultation would hardly be "conductive to the creation of that image of the Lokayukta as is necessary. If he has to play an effective role as the supervisor of the administration, he should have confidence of the Government as well as Opposition".²⁴ It could, therefore, be suggested

24. M.P. Jain. op. cit., p. 161.

that the best procedure for the appointment of these authorities would be one under which the Parliament, an agency or officers thereof, play the leading role and the executive is totally eliminated from it. It seems that under the present circumstances, the best alternative would be to have the Committee on Petitions of the Lok Sabha prepare a panel of names of competent persons for joint consideration by the Speaker of the Lok Sabha and the Deputy Chairman, Rjya Sabha, for appointment as the Lokpal or Lokayukta as the case may be. The said officials of the two Houses of the Parliament would make the appointment, (not after) but in consultation with the Chief Justice of India. In the case of appointment of the Lokayukta, in addition to the Chief Justice, they would also consult the Lokpal. Neither the President nor the Prime Minister or the Leader of the Opposition should be assigned any role in the appointment of these authorities, as their involvement in this process is most likely to bring partisan considerations into play and vitiate the impartiality of these officials.

The Lokpal /Lokayukta was further required under the Bill to subscribe to an Oath, in the manner prescribed before entering upon his office, either before the President or some person appointed for this purpose by him.²⁵ The Lokpal/Lokayukta was not to be a member of Parliament or of any State Legislature and must not hold any office of trust or profit. The Lokpal/Lokayukta should not be connected

25. Section 3(2).

with any political party and carry on any business or practice any profession.²⁶ The Bill further provided that if a member of Parliament or the Legislature of any State came to be appointed as a Lokpal/Lokayukta, he would resign his membership before entering upon his office.²⁷ Further, if the person so appointed was connected with any political party, he would sever his connection with it.²⁸ The most important point to be noted in regard to the three provisions referred to just above, is that all these provisions contemplated the appointment of active politicians to the Offices of the Lokpal and Lokayukta. Nevertheless, keeping in view the nature of Indian polity and so also the experiences of certain other parliamentary countries that have appointed active politicians to the delicate position of the Ombudsman, it would seem to be highly desirable to totally debar active politicians from appointment as the Lokpal or Lokayukta.²⁹

The Lokpal or a Lokayukta was to hold office for a term of five years. On ceasing to hold office, the Lokpal or Lokayukta would become ineligible for employment (whether

26. Section 4.

27. Section 4(9).

28. Section 4(c).

29. For a discussion of this aspect see K.A. Friedman, "Institutionalizing Bureaucratic Critics in Atlantic Canada: The Ombudsmen in Nova Scotia and Newfoundland" (mimeo.). A paper presented at the Annual Meeting of Political Studies Association, Halifax, Nova Scotia, October 21, 1977.

as the Lokpal or a Lokayukta or in any other capacity) under the Government of India or under the Government of a State or under any such local authority, Government company or society specified in the Bill.³⁰ In this respect, the above provision of the 1971 Bill was different from both the recommendations of the ARC as well as the provisions contained in the two draft bills of 1968 and 1969 respectively. But in any case, the above provision regarding the ineligibility of the Lokpal/Lokayukta for re-appointment seemed to be absurd on account of the fact that it would prevent the institution to benefit from the experiences of such persons acquired only over a long period of time. Experience abroad with the two relatively recent Ombudsman plans namely, the Danish and the New Zealand plans has shown that the first incumbents to the office have played a very important role in the successful operation of these plans. As a matter of fact, Professor Hurwitz - the first Danish Ombudsman continued in office from 1955 to 1971 and Sir Guy, the first New Zealand Ombudsman from 1962 to 1977. Further, instances were not lacking where the Deputy Ombudsman, especially in Sweden used to be groomed for appointment as the Ombudsman. Hence, this provision deserved to be totally dropped from the Indian Ombudsman scheme.

The Lokpal or Lokayukta could resign his office by writing to the President. The Lokpal or a Lokayukta

30. Section 5(1) read with Section 5(3).

might be removed from his office on the ground of misbehaviour and incapacity and on no other ground.³¹ The Lokpal/Lokayukta would be paid such salaries as were specified in the Second Schedule to the Bill.³² The allowances and pension payable to, and other conditions of, the Lokpal and Lokayukta would be such as may be prescribed provided that in prescribing the allowances and pension and other conditions of service, regard would be had to the allowances and pension payable to the Chief Justice of India, in the case of the Lokpal and a Judge of the Supreme Court in the case of Lokayuktas. Further, the allowances and pension and other conditions of service could not be varied to the disadvantage of the Lokpal/Lokayukta after his appointment.³³ A reading of these provisions would make it quite clear that the purpose of all these provisions was to confer on the Lokpal and Lokayukta a status equivalent to those of the highest judicial authorities in the country while at the same time ensuring their independence from the executive and the legislature.

The Bill further contained certain provisions meant for regulating the relationship between the Lokpal and Lokayuktas. The Lokpal had been empowered to exercise administrative control over the Lokayuktas for the convenient

31. Section 5(1). Proviso (a) & (b).

32. Section 5(4)..

33. Section 5(6) (a) & (b).

disposal of the investigations, and to issue general or specific directions as he deemed necessary. The Lokpal, however, was not authorized to question a finding, conclusion or recommendation of a Lokayukta.³⁵ But for reasons to be recorded in writing, the Lokpal might investigate any matter which fell within the purview of a Lokayukta whether or not a complaint had been made to him in respect of such an action.³⁶ Where two or more Lokayuktas were appointed, the Lokpal might, by general or specific order, assign to each one matters which might be investigated by them.³⁷ But nothing done by a Lokayukta could be questioned on the ground that such investigation related to a matter not assigned to him by the Lokpal.³⁸ In case of vacancy in the office of a Lokayukta, or his inability to perform his duties, the Lokpal or any other Lokayukta, as directed by the Lokpal, might officiate.³⁹ Further, a Lokayukta was to officiate as the Lokpal in case of vacancy in that office or inability of the Lokpal to perform his duties.⁴⁰ These provisions regarding the mutual relationship between the Lokpal and Lokayukta seem to be very important from the point of view of convenient and speedy disposal of the functions of the proposed office or organization.

35. Section 3(3) Proviso.

36. Section 7(3).

37. Section 7(4).

38. Section 7(4) Proviso.

39. Section 5(2) (b).

40. Section 5(2) (a).

The duty of the Lokpal is to investigate any action which was taken by, or with the general approval of, a Minister⁴¹ or a Secretary⁴² or any other category of public servant belonging to a class of public servants notified by central government in consultation with the Lokpal for the purpose.⁴³ Such an investigation could be undertaken by the Lokpal when a person lodged a complaint that he had sustained injustice in consequence of maladministration (characterized as "grievance" in the Bill)⁴⁴ or when he made a complaint involving "allegation". "Maladministration" under the Bill implied an action taken or purporting to have been taken in the exercise of administrative functions in any case:

(i) where such action or the administrative procedure or practice governing such action was unreasonably, unjust, oppressive or improperly discriminatory; or, (ii) where there had been negligence or undue delay in taking such action, or the administrative procedure or practice governing such

41. According to Sec. 2(h) "a "Minister" means a member (other than the Prime Minister) of the Council of Ministers, by whatever name called, for the Union and includes a Deputy Minister."

42. According to Sec. 2(1) a "Secretary" means "(i) a Secretary, a Special Secretary, or an Additional Secretary to the Government of India in any Ministry or Department; (ii) a Secretary, a Special Secretary, or an Additional Secretary, in the Cabinet Secretariat, Prime Minister's Secretariat or, as the case may be, the Office of the Planning Commission, and includes a Joint Secretary in independent charge of such Ministry, Department, Secretariat, or, as the case may be, the Office of the Planning Commission".

43. Sec. 7(i) (a) (ii).

44. Sec. 2(d) read with Sec. 7(i) (ii).

action involved undue delay.⁴⁵ Further, an "allegation" in relation to a public servant meant any affirmation that such public servant: (i) had abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person; (ii) was actuated in the discharge of his functions by personal interest or improper or corrupt motives, or, (iii) was guilty of corruption or lack of integrity.⁴⁶ The above provisions regarding the functions of the Lokpal clearly indicated that the Lokpal's role in India was not to be confined to handling cases of public grievances only but also encompassed cases involving public corruption. Thus, the ombudsman scheme under the 1971 Bill extended far beyond the role traditionally assigned to such authorities in the Scandinavian countries.

The Lokpal could initiate an investigation suo motu, without a complaint being filed, if in his opinion an administrative action be or could have been the subject of "grievance" or "allegation".⁴⁷ "Action" had been defined broadly so as to mean action taken by way of decision, recommendation or finding or in any other manner and included failure to act.⁴⁸ However, the Bill, much like the ARC's recommendations, did not confer on the Lokpal the power of inspection of public agencies and prisons, etc.,

45. Sec. 2(g) read with Sec. 7(1) (ii).

46. Sec. 2(b)

47. Sec. 7(1)

48. Sec. 2(a)

and thus to a very large extent restricted his role as a guardian of the people's interests.

Likewise, a Lokayukta might investigate any action taken by or with the approval of a public servant other than a Minister or Secretary, in any case where a complaint involving a grievance of an allegation was made in respect of such action, or can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.⁴⁹ Further, like the Lokpal, the Lokayukta might investigate a matter suo motu if in his opinion an action can be or could have been the subject of a grievance or allegation.⁵⁰

The above-mentioned provisions regarding the functions of the Lokpal and Lokayukta raise two important issues which need to be dealt with here. Is it proper to saddle the organization of the Lokpal and Lokayukta(s) with not only the enormous task of redress of grievances but also the complex cases involving complaints of allegation? Is the two-tier pattern of Ombudsmen envisaged under the 1971 Bill conducive to a proper and harmonious functioning of the proposed organization?

A proper and correct response to the first question must be based on the following facts. India is a country of more than 624 million people scattered over 300 million kilometers of area. More than seventy five percent of these people live in 0.65 million villages, and a majority of whom

49. Sec. 7(2).

50. Sec. 7(2).

is not only illiterate but also politically docile.* Thus, obviously enough, a vast majority of the Indian masses is largely unaware of what goes on every day in the world surrounding them. Highly fatalist in their basic orientation towards life, and superstitious in their social beliefs, these poor masses are and have long been subjected to exploitation by unscrupulous caste-leaders; spiritual-religious preachers and politicians and civil servants to a lesser or greater degree. On account of their precarious socio-economic conditions even after three decades of self-rule, they have innumerable complaints against the politicians and civil servants with whom they mostly come in direct contact. Many of their complaints are genuine but many may be based on sheer misunderstanding of the ever expanding complexities of the Indian administrative system. The complainants have been trying the existing mechanisms for redress of their grievances for a very long time and have become sick of using these mechanisms primarily on account of their incapacity or inability to deliver the desired redress. In such a situation, irrespective of the provisions of any act of the legislature (which not only the common man - but even a majority of the educated people do not very quickly understand), the people are likely to rush to an authority like the Lokpal with their complaints,⁵¹

51. Experiences with the two grievance redressing mechanisms under the Government auspices, one at the central and another at the State level prove this point beyond doubt. See pp. 34-35; Besides, the Signs of stress have been no less visible in the Scandinavian countries and New Zealand. For details see Gellhorn, Ombudsmen and Others op.cit., pp. 1-225.

as soon as they become aware of its existence. Some of these complaints may be well founded but a majority of them may be absolutely untenable. Such an authority or grievance-handling mechanism, especially when it consists of only two or three or four persons, is most likely to be overburdened with complaints. The number of complaints would go up with the increasing awareness about the Ombudsman-like mechanism year after year. The overburdening of these authorities with complaints would become all the more inevitable in view of certain provisions in the Bill. In a situation where not only an affected party, as in the case of a "grievance", but anyone can file a complaint of "allegation" against a Minister or a public servant, the number of complaints is bound to grow to unmanageable limits for such functionaries.

Moreover, the simple and informal nature of the functioning of the Ombudsman institution hardly suits the requirements of the formal and complicated mechanism required for handling cases involving acts of "allegation". For the purpose of fighting corruption in Indian administration of a special kind of organization, - in the form of Vigilance Commissions, already exists at the Central and State levels. Constituted by the Central and State governments, these Vigilance Commissions had been handling the cases of corruption since 1964. They had become quite well known to the people over the course of a decade or so as instruments for combating corruptions in the Central and State administrations. However, their disadvantages compared with the

proposed Ombudsman scheme are lack of independence from their respective governments and exclusion of ministers from their jurisdiction . Thus, what was needed was not their abolition as was envisaged by the ARC report and as was perhaps the case with 1971 Bill, but strengthening of their powers, expansion of their jurisdiction and conferment of adequate independence from the government, in order to be able to handle cases of corruption adequately. Their abolition and instead substitution by the Lokpal and Lokayuktas was not an appropriate solutions. Thank God, it did not happen, at least at the central level, although it did happen in those states where the offices of Lokayuktas were established. Their experience shows that people who had got acquainted with the Vigilance Commissions, continued to write their complaints to the former even after the setting up of the offices of the Lokayukta and Uplokayukta. As some of the schemes had no provision for handling of complaints addressed to the State Vigilance Commission, no effective action on such complaints could be taken.⁵²

Second, the two-tier hierarchical pattern of the office of the Lokpal and Lokayukta(s) envisaged under the 1971 Bill seems to be justifiable on neither conceptual nor pragmatic grounds. Examining the entire issue of the hierarchical relationship of the two functionaries at somewhat greater length, M.P. Jain has observed:

52. This has been the experience of the Rajasthan state all these years. In spite of the abolition of the Vigilance Commission in 1973, complainants continue to address their complaints to the Vigilance Commission rather than to the Office of the Lokayukta and Uplokayukta.

.... is it advisable to break down the Ombudsman mechanism into two parts, Lokpal and Lokayukta and divide the administration into two parts, Ministers and Secretaries at one level, and officers below them at another level. This does not seem to be feasible or practicable or desirable. Administration is one integrated affair and the same principles and standards need to be applied in evaluating its actions throughout Whether or not there is maladministration, has to be decided by applying certain norms the norms to determine maladministration have to be uniform, and consistent, irrespective of level. What constitutes maladministration at one level would also constitute maladministration at the other level as well. If two separate ombudsman-like officers are functioning in the two different sectors of administration, then there is real danger that different criteria would be evolved to judge 'maladministration' and this would lead to confusion in the functioning of administration.⁵³

Under the provisions of the Bill, grievances arising out of certain kinds of administrative actions fell outside of the jurisdiction of the Lokpal and Lokayukta. First, the actions taken in respect of matters involving foreign relations, security of the state, awards and grants of honours, etc., specified in the Third Schedule to the Bill⁵⁴ could not be investigated by these functionaries provided a Secretary to the Government issued a certificate to that effect. Second, a grievance was further not to be investigated by the Lokpal or Lokayukta if the complainant has or had open to him any remedy by way of proceedings before any tribunal or court of law except when, on being satisfied, they themselves decided

53. Jain op.cit., p. 138.

54. For details regarding the matters excluded from the jurisdiction of these authorities refer to the Third Schedule to the Bill.

to the contrary.⁵⁵ This restriction in respect of complaints for which remedy by way of proceedings before a tribunal was available appears quite justifiable. Special tribunals under certain kinds of laws are provided for, for the dispensation of relatively less expensive, quick and expert justice.

Though not as quick and informal as the Ombudsman's investigations, the tribunals do enjoy the advantage of expertise within their restricted area of operation. However, the restriction in regard to remedy by way of court proceedings seemed to be highly unjustifiable in the Indian context.

Judicial review in India and most of the common law countries is of a very limited nature. It does not go beyond touching the fringe of the administrative actions. Ordinary courts of law in India do not go into the merits of an administrative act or decision nor do they tend to closely scrutinize the controversial issues of facts. It would, therefore, have been much wiser for the drafters of the Bill to have borrowed this provision from the New Zealand Ombudsman Act, 1962 in full, instead of borrowing it half way, and to have excluded from the jurisdictions of these authorities cases in which relief could be obtained from the courts on merits. In its present form, this provision largely mitigates or neutralizes the very purpose underlying the decision to have an Ombudsman institution. The Lokpal or Lokayukta has been further debarred from investigating any complaint of "grievance" or "allegation" in respect of any action which

55. Sec. 8(1)(b) Proviso.

had been inquired into by, or had been referred for inquiry to a commission of inquiry under either the Commission of Inquiry Act, 1952 or Public Servants' Inquiry Act, 1850 with the prior concurrence of the Lokpal.⁵⁶ The Lokpal or a Lokayukta had been further debarred from investigating any complaint involving a grievance against a public servant referred to in sub-clause iv of clause k of section (2).⁵⁷

The time limit prescribed for making a complaint involving a "grievance" was set at twelve months from the date on which the action complained against becomes known to the complainant⁵⁸ and for a complaint involving "allegation" was set at five years from the date on which action complained against is alleged to have taken place.⁵⁹ But in the case of a complaint involving a grievance, the Lokpal or Lokayukta may investigate even after the expiry of the 12 months' time limit if the complainant satisfied him that he had sufficient cause for not making the complaints within the specified time.⁶⁰ This extension of the maximum time limit for filing complaints of allegation to 5 years from the 12 months originally recommended by the ARC, would open the flood-gates of complaints of this kind.

Additionally, in the case of a complaint involving a "grievance" the Lokpal or Lokayukta would not be entitled to question any administrative action involving the exercise

56. Sec. 8(2)(a) & (b).

57. Sec. 8(3).

58. Sec. 8(5)(a).

59. Sec. 8(5)(b).

60. Sec. 8(5)(b) Proviso.

of a discretion except where he was satisfied that the elements involved in the exercise of discretion were absent to such an extent that the discretion could not be regarded as having been exercised.⁶¹ This appears to be a very restrictive formulation of the grounds to upset a discretionary action. There are many grounds on which, under the common law, discretionary decisions can be impugned, e.g., if a discretion is exercised for an improper purpose or on irrelevant grounds or on the basis of irrelevant considerations. Therefore, it would seem proper to incorporate all these grounds for questioning a discretionary decision.⁶²

However, whereas a complaint involving a grievance can be made by the person aggrieved, an allegation can be made by any person other than a public servant.⁶³ In case the person aggrieved is dead or is unable to act for himself for any reason, the complaint can be made by any person who in law represents his estate or by any person who was authorized by him in his behalf.⁶⁴

A complaint has got to be made in such form, and accompanied by such affidavits and other documents, as may be prescribed by the rules.⁶⁵ Any letter written to the Lokpal or Lokayukta by a person in police custody or in a gaol, or in any asylum or other place for insane persons,

61. Sec. 8(6)

62. Jain op.cit., p. 141.

63. Sec. 9(1)(b).

64. Proviso to Sec. 9.

65. Sec. 9(2).

shall be forwarded to the addressee unopened and without delay by the police officer or other person in-charge of such place or establishment and the Lokpal or Lokayukta, as the case may be, may on being satisfied would treat such a letter as a complaint made in accordance with the provisions of the act.⁶⁶ Such a provision also exists in a number of countries as well as the New Zealand Ombudsman Act. Further, when on receipt of a complaint, the Lokpal or Lokayukta proposed to conduct any investigation, he would forward a copy of the complaint to the public servant concerned as well as to the "competent authority" concerned.⁶⁷ However, if the Lokpal or a Lokayuta intended to undertake an investigation suo motu, he would forward a statement setting out the grounds therefor to the public servant as well as competent authority concerned.⁶⁸

Every investigation undertaken by the Lokpal or a Lokayukta would be conducted in private.⁶⁹ The identity of the complainant and that of the public servant in question would not be disclosed to the public or press either before, during or after the investigation.⁷⁰ In other respects, the procedure for conducting an investigation was to be such as the Lokpal or a Lokayukta considered appropriate in the circumstances of the case.⁷¹

66. Sec. 9(3).

67. Sec. 10(1)(a).

68. Sec. 10(1)(a).

69. Sec. 10(2).

70. Sec. 10(2).

71. Sec. 10(3).

Before proceeding any further, a few comments on the aforementioned provisions would seem to be in order. First, the provision regarding submission of complaints together with such affidavits and documents as might be prescribed would not be conducive to the simple and informal functioning of the institution of Lokpal and Lokayukta. It introduced an element of formalism into the functioning of the authorities. Experience with similar positions in the state Lokayukta Acts has shown that a large numbers of complaints had to be ultimately filed without initiation of any action for want of affidavits, etc.⁷² Hence, this provision seemed to make the redress of grievances and removal of obligations - a complicated affair and, therefore, prescribed to be dropped in the interest of informal and efficient functioning of these authorities. Second, the provision regarding submission of a copy of the complaint to the competent authority, besides the public servant concerned, which seemed to have been borrowed from New Zealand, is a sound provision. Perhaps, the assumption behind this provision was that "on being informed of the proposed inquiry, the competent authority might himself look into the matter and take such action as might obviate the need of enquiry by the Lokpal/Lokayukta. If this happened, then certainly the burden of these offices would be very much reduced.

72. For the substantiation of this fact refer to the First, Second and Third Annual Reports of the Lokayukta and Uplokyukta, (1973-74) (1974-75) & (1975-76) respectively.

From this point of view the provision in the Government Bill (1971) deserved to be supported.⁷³ Third, the provision regarding non-disclosure of the identity of the officer complained against would help keep the morale of the public servants. The ARC had not made such a provision, but this provision of the 1971 Bill seemed to be a healthy one.

The Lokpal or a Lokayukta might, in his discretion, refuse, or cease, to investigate any complaint involving a grievance or an allegation if in his opinion it is frivolous or vexatious or is not made in good faith, or there are no sufficient grounds for investigating or continuing the investigation, or other remedies being available to the complainant, it would be more proper for him in the circumstances of the case to avail of such remedies.⁷⁴ The Lokpal or Lokayukta is to record his reasons and communicate the same to the complainant and the concerned public servant when he decided not to entertain a complaint or to discontinue an investigation.⁷⁵

Further, it had been provided in the Bill that the conduct of an investigation by the Lokpal or Lokayukta would not affect such action, or any power or duty of a public servant to take further action with respect to any matter subject to the investigation.⁷⁶ This provision was quite in keeping with the concept of the Ombudsman institution and

73. Jain op.cit., p. 173.

74. Sec. 10(4) (a) (b) & (c).

75. Sec. 10(5).

76. Sec. 10(6).

established the simple, informal and flexible nature of its operations. It further, went to establish the fact that an investigation by the Ombudsman did not lead to rescinding of the administrative decisions complained against, and that investigation by him did not bring the process of administration to a standstill, as could be the case with judicial review by ordinary courts.

Under the 1971 Bill the Lokpal/Lokayukta had been bestowed with wide powers to collect evidence in connection with an investigation being undertaken by him. The officials might require any public servant or any other person who, in their opinion, was able to do so, to furnish necessary information or some document.⁷⁷ The Lokpal/Lokayukta was to enjoy the powers of a civil court while trying a suit for such matters as summoning and enforcing attendance of any person and examining him on oath; requiring recovery, discovery and production of documents; taking evidence on affidavits; requisitioning any public record or a copy thereof from any court or office; issuing commissions for the examination of witnesses or documents and for such matters as may be prescribed.⁷⁸ Any proceeding before the Lokpal/Lokayukta was to be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.⁷⁹ Also no obligation imposed by any law to maintain secrecy of information obtained by, or furnished to, Government or persons

77. Sec. 11(1).

78. Sec. 11(2) (a) (b) (c) (d) (e) & (f).

79. Sec. 11(3).

in government service, was to apply to the disclosure of information for the purposes of any investigation by the Lokpal/Lokayukta.⁸⁰ However, no one was to be compelled by the Lokpal/Lokayukta to furnish any information or produce any document or answer any question which might prejudice the security or defence or foreign relations of India⁸¹ or the detection of any crime, or which might involve the disclosure of the proceedings of the Central Cabinet or those of any Committee thereof.⁸² For this purpose, a certificate issued by a Secretary to the Government certifying that any information, answer or portion of a document was of such a nature as described above, was to be final and conclusive.⁸³

"This provision deserved to be considered carefully, particularly, because in an investigation being conducted by the Lokpal in a complaint against a Minister or Secretary, there was a chance that by this provision the Lokpal may be thwarted in his investigation; by exercising his power of certification in a rather liberal manner, the Lokpal may be denied relevant evidence having bearing on the investigation."⁸⁴ A better alternative in this respect would have been to adopt Section 20(1) of the New Zealand Ombudsman Act, 1975, where the power to issue such a certificate has been confined on a single authority of the status of the Attorney General.

80. Sec. 11(4).

81. Sec. 11(5) (a).

82. Sec. 11(5) (b).

83. Sec. 11(5) Proviso.

84. Jain op.cit., p. 175.

After having investigated a complaint involving a grievance, if the Lokpal/Lokayukta was satisfied that the action in question had resulted in injustice to the complainant or any other person, he may recommend through a written report to the public servant and to the competent authority concerned that such injustice should be remedied in such manner and within such time as may be specified in the report.

Clause 12(1) of the Bill provided that the Lokpal/Lokayukta was to recommend how an injustice done to a person can be remedied by the officer concerned. In New Zealand, under Sec. 22(3) of the 1975 Act the Ombudsman can make recommendations on various scores e.g., that the administration should have given reasons, the decision should be cancelled or voided or an omission rectified, etc. In many cases, even though injustice might not have been done to the individual complainant, an investigation might reveal some aspect of administrative functioning or even a law or procedure which the Lokpal/Lokayukta might feel deserved to be modified. Nothing should prevent him from making a recommendation to that effect. This would help improve law as well as administrative procedure and in the ultimate analysis the entire system of administration.

If an action under investigation involved an "allegation", and if the Lokpal/Lokayukta was satisfied that the allegation could be substantiated wholly or partly, he was supposed to report in writing, communicating his findings along with the material evidence to the competent

authority.⁸⁵ The competent authority was obliged to examine the report and reply within three months as to what action was proposed to be taken on it. In case the Lokpal/Lokayukta was satisfied with the action taken, whether on a grievance or allegation, he would close the case with intimation to the complainant. However, if the Lokpal/Lokayukta was not satisfied he might make a special report upon the case to the President and also inform the complainant concerned.⁸⁶

The Lokpal and the Lokayukta would present annually a consolidated report on the performance of their functions under this Act to the President.⁸⁷ On receipt of a special or annual report, the President would cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament.⁸⁸

The Lokpal might appoint, or authorize a Lokayukta or any officer subordinate to him to appoint, officers and other employees.⁸⁹ However, the categories of officers and employees who might be appointed, their salaries, allowances and other conditions of service, and the administrative powers of the Lokpal and Lokayuktas would be such as might be prescribed after consultation with the Lokpal.⁹⁰ Further, for conducting investigations, the Lokpal or Lokayukta might utilize the services of: (i) any officer or investigation agency of the

85. Sec. 12(2).

86. Sec. 12(4) & (5).

87. Sec. 12(6).

88. Sec. 12(7).

89. Sec. 13(1).

90. Sec. 13(2).

Central Government with the concurrence of that Government or any other person or agency. The provision authorizing the Lokpal to appoint essentially aimed at ensuring the independence and impartiality of the staff of the Lokpal/Lokayukta. However, the aim underlying this provision is vitiated by the following provision regarding the right of the executive to determine categories, salaries, allowances, etc., of the officers and employees to be appointed by the Lokpal. The experience of the two Canadian Provinces of Nova Scotia and Ontario with similar provisions in their Ombudsman acts has shown that the Ombudsmen have always had difficulties when asking for the creation of additional posts.⁹¹ Hence, within certain limits prescribed by the Legislative these officials should be given a completely free hand in matters regarding the personnel of his office. The right of the Lokpal/Lokayukta to seek the help of any other officer or agency for investigation was a sound idea especially from the point of view of keeping the size of his staff within limits, but the condition regarding prior concurrence of the government appeared to be unnecessary and incompatible with the independence of the Lokpal from the executive. After all, all the investigations conducted by the Lokpal/Lokayukta would be conducted in order to promote larger public interests, thus he should be free to utilize the service of any officer or investigation agency.

91. For details regarding this kind of problem being faced by the Nova Scotia Ombudsman, see the Ombudsman's Report (Halifax: 1975), pp. 8-9.

Subject to certain exceptions⁹² prescribed under the Bill, information obtained or evidence collected during an investigation by the Lokpal/Lokayukta or a member of the staff was to be treated as confidential which no court can compel to be disclosed in spite of the Indian Evidence Act.

Intentionally offering insult to,⁹³ or causing any interruption to the Lokpal/Lokayukta in the conduct of any investigation by him was punishable with simple imprisonment for a term which may extend to six months, or with fine, or with both.⁹⁴ An equal amount of punishment had been prescribed for bringing the Lokpal/Lokayukta into dispute.⁹⁵

In order to provide protection to the Lokpal/Lokayukta, it has been provided in the Bill that no suit, prosecution or other legal proceeding is to lie against the Lokpal/Lokayukta or any other member of his staff in respect of anything done or intended to be done by him in good faith.⁹⁶ Further, the President had been empowered to confer on the Lokpal/Lokayukta any additional function in relation to the redress of grievances and eradication of corruption through a notification published in the Gazette

92. Sec. 12(2) read with Sec. 12(1).

93. This is a very essential provision provided for in the Bill. In fact, occasions have arisen in the history of such institutions elsewhere, where for want of such provisions intentional insults have been inflicted upon the Ombudsman by complainants. For instance see the Report of the Ombudsman Nova Scotia (Halifax: 1971) p. 2.

94. Sec. 15(1).

95. Sec. 15(2).

96. Sec. 16(1).

of India after consultation with the Lokpal.⁹⁷ The President might, by a written order, after consultation with the Lokpal, confer on the Lokpal/Lokayukta powers of a supervisory nature over agencies, authorities or officers set up by the central government for the redress of citizens grievances and eradication of corruption.⁹⁸ However, there was another provision in the Bill according to which the President through a written order, could require the Lokpal to investigate any action (in respect of which a complaint may be made to the Lokpal/Lokayukta) and the Lokpal has to comply with such order.⁹⁹ This did not seem to be compatible with the important requirement of independence of the Lokpal from the executive, as under the parliamentary system the President in the ultimate analysis meant the Prime Minister. It would have been much more appropriate and in keeping with the philosophy underlying the idea of Ombudsman if the Speaker of the Lok Sabha had been charged with the function of referring such cases to the Lokpal.

The Lokpal or Lokayukta might, by a general or special order in writing, delegate any of his powers or duties (except the power of making reports to the President), to any of the members of the staff working under him.¹⁰⁰ Such provisions also exist under the New Zealand Ombudsmen Act, 1975 and Nova Scotia Ombudsman Act, 1971. The underlying

97. Sec. 17(1).

98. Sec. 17(2).

99. Sec. 17(3).

100. Sec. 19.

purpose of such provisions was to introduce an element of flexibility in the functioning of such institutions while at the same time avoiding the possibilities of any objections as to the legality of the actions so performed. The President might, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of the Bill.¹⁰¹

The Bill also declared specifically that its provisions were in addition to the provisions of any other enactment or rule of law under which any remedy (by way of appeal, revision, review or in any other manner), was available to the complainant and the Bill did not limit or affect his right to avail himself of such a remedy.¹⁰²

Having dealt with the provisions of the Lokpal and Lokayukta Bill, 1971, it would not be out of place here to deal with some broad points of criticism of the proposed scheme.

VIOLATION OF RULE OF LAW:

Mr. Justice P.B. Mukharji, a former Chief Justice of a State High Court, in his article entitled "Grievance-Man in the Indian Administrative System: Ombudsman, Lokayukta and Lokpal", raised serious legal objections against the very idea of Ombudsman, as being against the doctrine of rule of law. Expressing the fear that in course of time it may

101. Sec. 20(1).

102. Sec. 22.

itself become a super-administrator and may erode democratic values altogether instead of protecting them.¹⁰³ Mr. Justice Mukharji refers to "Lokpal" and "Lokayukta" not only as 'flamboyant' but also dangerously pretentious: much too reminiscent of the "benevolent despots". He further contended that:

Such an Ombudsman is not quite a Supreme Court or a High Court Judge". He only has pretensions of that office's conditions of service. By virtue of his proposed method of appointment, status and tenure, he cannot be responsible to Parliament or State Legislatures, and he is to be a watch-dog of erring ministers and officials. Secondly, it is not only impractical, it is also against the whole tenor and set up of the Indian Constitution and will involve an undesirable readjustment of existing constitutional values in relation to Parliament, State Legislatures and Judges of the Supreme Court and the High Court. This Ombudsman will in time be the Super-Parliament, the Super-Legislature, the Super-Judge. He will pave the road to dictatorship in India, to a reign of espionage under the cover of bureaucratic tyranny, and to a grievance-oriented state constitutionally encouraging a society of grumblers and critics. It is expected that the authorities will think twice and reflect wisely before taking such a disastrous step of demoralizing the whole administration and plunging the state into administrative chaos and confusion from which it will emerge.¹⁰⁴

Mr. Justice Mukharji was against creation of rival institutions to compete with the Courts and the ordinary laws by which all should be governed. He also believed that:

103. P.B. Mukharji, "Grievance-Man in the Indian Administrative System: Ombudsman, Lokayukta and Lokpal", Indian Journal of Public Administration, Vol. 11, 1971 pp. 408-24.

104. Ibid., p. 410.

... An institution like Ombudsman will be an excuse for tyranny and maladministration. An Ombudsman is contrary to the basic spirit of the Indian Constitution and unless one is prepared to throw the whole Indian Constitution lock, stock and barrel, overboard, an Ombudsman cannot fit into the Indian Constitution. It will denigrate the judiciary. It will denigrate the Parliament and the State Legislatures. Soon after the Ombudsman, we will have to have an Ombudsman for the Ombudsman. The Ombudsman in India will be a new 'star-chamber' with a different Indian instead of a Nordic name.¹⁰⁵

Likewise Mr. Justice Mukharji further questioned:

"What guarantee is there that they will not go the way that the myriad departments and numerous offices have gone?"

Calling them "legal fancies and proliferation", he said:

"The point here to emphasize is that with the prospective Ombudsman, the Vigilante Commission and the Commissioner of Public Grievances, India has an unholy treaty to threaten the Rule of Law".^{106a}

Undoubtedly, the views expressed above indicated nothing more than the professional bias of the legal luminary.^{106 b} Had the highly exaggerated and extremely hypothetical fears expressed above been true at all, at least New Zealand should have had a dictatorial regime long before. The experiences of New Zealand (a country having a common law tradition and a parliamentary system of democracy) and of the state Ombudsman plans in India show that there is no substance in the views expressed above.

105. Ibid., pp. 411-13.

106^a. Ibid., p. 412.

106b. The very fact that a former Attorney General of India Late Mr. M.C. Setalvad and a former Chief Justice of India, Mr. Justice Gajendragadakar very strongly advocated the idea of setting up Ombudsman institutions in the country shows that the fears so expressed by Mr. Justice Mukharji on constitutional grounds are not sound and valid.

JURISDICTIONAL PROBLEMS:

A very significant problem in respect of the jurisdiction of the proposed Lokpal and Lokayuktas under the 1971 Bill was that of the inclusion of complaints involving "allegations" within the jurisdiction of these authorities. It has been pointed out that such allegations are a more serious matter which require a highly formalized organization and procedures of investigation, in comparison to the innumerable cases of public grievance that the Ombudsman institution is primarily meant for looking into. There already exists machinery in the form of central and state Vigilance Commissions for dealing with cases of allegations. Hence, instead of transferring these cases to the proposed Ombudsman institution, which was even otherwise likely to be overburdened with the cases of public grievance, it would not only be worthwhile to retain the existing vigilance organization but also to properly equip it with adequate powers and make it completely independent of the executive.¹⁰⁷ If the Vigilance agencies might be allowed to handle the cases of allegation, and the role of the proposed Ombudsman institution confined to cases of public grievance, the two agencies could function in close collaboration with each other so as to facilitate the mutual transfer of cases between them according to their pre-dominant nature.

Another controversy involving the jurisdiction of the proposed institutions was "whether a person who having

107. Cf: Jain op.cit., pp. 155-57.

exhausted judicial remedy and failed to get relief for his grievance should be debarred from seeking redress of his grievance from the Lokpal. Such cases may arise because of the limited character of the judicial review available in India. In most of the cases, judicial review does not go to the merits of the administrative action challenged. In the circumstances, it may be legitimate to argue that merely because a person seeks to invoke the jurisdiction of a court and fails on merits, he should not be barred from seeking relief at the hands of the Lokpal. In such a case, the period of limitation for entertaining complaints should be seen from the date the court renders its decision.¹⁰⁸

Another issue of a jurisdictional nature points towards the possibility of the institution's work being interfered by frequent court review of its jurisdiction as a device for stopping or delaying investigations.¹⁰⁹ As the jurisdiction of the Lokpal and Lokayukta would only be advisory, devoid of all legal sanction, occasions might arise when courts would have to review the cases involving the jurisdiction of these functionaries. In other countries either the courts enjoy no such power or even where they enjoyed such power, they have rarely considered it necessary to resort to it. But in India, in cases of a doubtful nature,

108. Jain op.cit., pp. 155-57.

109. R.L. Narsimhan, "The Indian Ombudsman Proposal: A Critique" Law and the Commonwealth (Occasional Papers), Fourth Commonwealth Law Conference (New Delhi, 1971), pp. 33-35.

it might perhaps be necessary for the proposed authorities to obtain an immediate declaratory order from the Supreme Court, so that no one could be in a position to withhold an investigation indefinitely by raising a question regarding the jurisdiction of these authorities in a court of law.

A further controversy related to the exclusion of the Office of the Prime Minister from the jurisdiction of the proposed institution of Lokpal. The original recommendation of the ARC did not keep the Prime Minister out of the purview of the Lokpal. It was in the draft Bills of 1969 and 1971 that it was decided to keep the Prime Minister outside of the jurisdiction of the Lokpal. It was argued on behalf of the Government that if there was any complaint of allegation or grievance against the Prime Minister, the proper forum for its investigation would be the Parliament, where a vote of no-confidence could be brought against him. The staunch advocates of the idea of retaining the Prime Minister within the jurisdiction of the Lokpal contended that a no-confidence vote was very different from charges of allegation of improper conduct or corruption, which could never be taken up against him by a vote of no-confidence on the floor of the House. Besides, the cases involving a complaint in the nature of a grievance can hardly be raised or permitted to be raised on the floor of the two houses of Parliament by the Presiding Officers. Thus, it was argued that there was no logic why the Office of the Prime Minister should not be

subject to investigation by the Lokpal.¹¹⁰

Still another delicate jurisdictional issue related to the question whether the Lokpal and Lokayukta should entertain complaints of allegation and grievance made through anonymous letters. The 1971 Bill did not make any explicit provision for this, but it is an intriguing question to which there can be no simple answer. A strong case "can be made in favour of the practice that this would provide adequate protection to those complainants who may fear intimidation and reprisals by or on behalf of those against whom the complaint may be made, especially against the police officials. On the other hand a stronger argument can be made out that it would unnecessarily increase the work-load of the Ombudsman tremendously and if every anonymous complaint is to be investigated, more genuine complaints may remain in the background. The situation can be resolved only if the complaints are assured of due protection when they specifically make allegations against certain officials and express fear of reprisals therefrom."¹¹¹

110. Two persons Mr. P.K. Tripathi, a professor of Law, and P. Mohan Kumarmangalam, a renowned lawyer and parliamentarian, in their evidence before the Joint Select Committee on the Lokpal and Lokayukta Bill, 1968 too strong exceptions to the exclusion of the Prime Minister from the jurisdiction of the Lokpal. For details refer to the Evidence of the Joint Select Committee on the Lokpal and Lokayukta Bill, 1968 (New Delhi, 1969) pp. 98 and 256 respectively.

111. R.B. Jain, "The "Ombudsman": A Super-Administrator Or a Grievance-Man", Indian Journal of Public Administration, Vol. 21, 1975 p. 537.

ADMINISTRATIVE OBJECTIONS:

As pointed out above, a serious criticism levelled against both the ARC and the 1971 Bill relates to the division of the proposed Ombudsman institutions into two tiers - the Lokpal and Lokayukta. M.P. Jain, a keen student of the Ombudsman institution dealing with this aspect of the problem pointed out:

Administration is one integrated affair and the same principles and standards need to be applied in evaluating its actions through out. it is difficult to see how the Lokpal and Lokayukta would be able to sort out their respective functions in a hierarchical system of administration for which Ministers at the top are held responsible."¹¹²

That is why we do not find a hierarchical division of responsibilities between the Ombudsman under most of the Ombudsman systems. If we try to examine the recent reforms of the Swedish and New Zealand Ombudsmen systems of 1976 and 1975 respectively, we find that under their new collegial Ombudsmen plans - a functional division of tasks with equal status of all ombudsmen has been preferred to a hierarchical division. Thus, to deal with the Indian administrative system too as a composite whole we need to avoid this hierarchical system of Ombudsmen.

Further, it has been very often argued that in all the countries where ombudsman like mechanisms have been set up at the National or federal level, the population is very small and homogeneous and the area very compact subject

¹¹². Jain op.cit., p. 138.

of course to England where the citizen cannot directly approach the Parliamentary Commissioner with a complaint. Thus, "a doubt is often expressed by some people whether the Ombudsman can work satisfactorily in a country like India with its immense size and population?"¹¹³ Table 3:1 below shows the relative position regarding the population, number of complaints for the year under report and number of complaints per 100,000 inhabitants.

Without much effort and indulgence in statistical calculations, it can be clearly discerned from the facts contained in the table that the fears expressed about the successful operation of this kind of institution in India are well founded. The population of India is more than 100 times that of the largest country - England - mentioned in the table. Even if we do not take account of the poor economic conditions of India, the relatively lower standards of morality of Indian public servants and wide diversities of the numerous kinds of Indian population on the one hand, and the fundamental differences between the British scheme and the proposed Indian scheme on the other, the Lokpal and Lokayukta(s) would receive at least 6,000 complaints per year. Thus it is very clear that the two or more persons could not cope with the case-load that would fall on them. They would have to rely upon others for the disposal of this case-load, perhaps upon their subordinates - a problematic aspect dealt with separately below.

113. Jain op.cit., p. 138.

TABLE 3:1

STATEMENT SHOWING THE YEAR OF ESTABLISHMENT, POPULATION
AND COMPLAINTS REGISTERED PER 100,000 INHABITANTS
BY OMDUSMEN IN A NUMBER OF COUNTRIES

	Year establishment	Population served (millions)	Complaints received during year	Complaints per 100,000 inhab.	Complaints outside jurisdiction %	Complaints received and deemed justified %
ENGLAND	1967	54.00	548	1.01	64.7	36.8
NEW ZEALAND	1962	2.50	1,135	45.4	52.8	21.5
SWEDEN	1809	8.12	3,531	43.5	47.1 (1)	31.3
DENMARK	1955	4.96	1,275	25.7	67.8	18.5
CANADA						
Alberta	1967	1.63	815	49.3	65.0	16.7
New Brunswick	1967	0.63	280	44.3	64.6	46.2
Nova Scotia	1970	0.77	297	38.6	57.2	36.2
Manitoba	1970	0.98	487	49.3	56.6	43.7
Quebec	1969	6.03	5,758	95.5	57.2	35.2
UNITED STATES						
Iowa	1970	2.80	1,200	42.9	39.0	25-35
Nebraska	1971	1.40	579	41.3	61.7	51.0
Hawaii	1969	.80	1,678	209.7	51.9	28.7

SOURCE: New Zealand, Official Record of Proceedings:
 Conference of Australian and Pacific Ombudsmen.
 (Wellington: Office of the Ombudsman, 1974),
 p. 89A.

The validity of the doubt about the satisfactory functioning of the proposed Indian Ombudsman scheme can be established further by just a simple statistical exercise. Leaving aside all the differences in the levels of economic development, literacy, efficiency of civil services and democratic tradition existing between India and the Scandinavian countries, if we try to calculate the probable case-load of the Lokpal and Lokayukta. Table 3:2 below shows the relative population position of the four Scandinavian countries together with the number of cases docketed by their respective Ombudsman during the year 1963. Using the year 1963 as a basis, if we try to calculate the probable case-load of the Indian Lokpal and Lokayukta(s) in relation to each one of these countries we find that they would really be overburdened with complaints. The Indian counter parts of the Norwegian Ombudsman (who would have to cater to the needs of 624 million people) would have had approximately two hundred thousand complaints. Similarly, the Indian Ombudsman would have received 96 thousand, 144 thousand and 131 thousand complaints in relation to their Swedish, Danish and Finnish counterparts respectively. All these figures clearly show that it would have been almost impossible for these two functionaries to handle such a heavy case-load. The number would have certainly been frightening if other factors like relatively poorer economic conditions; lower levels of performance and morale of Indian public servants and the illiteracy of the

TABLE 3:2STATEMENT SHOWING THE POPULATIONS AND CASES DOCKETED
BY THE FOUR SCANDINAVIAN OMBUDSMEN IN THE YEAR 1963

Country	Population (in millions)	Cases Docketed
Norway	3.7	1,257
Sweden	7.6	1,224
Denmark	4.7	1,130
Finland	4.6	1,029

SOURCE: Gellhorn, Ombudsmen and Others, p. 157.

masses coupled with the power of these functionaries to look into the complaints of allegations, had been taken into account.

Coming back nearer home, it might be worthwhile here to draw upon the experiences of a few offices for the redress of public grievances established under Governmental auspices in India. The Director for Removal of Public Grievances appointed by the Government of Rajasthan State received as many as 2,544 complaints during 1964-65 of which 1,956 were from public servants and the remaining 588 from the general public.¹¹⁴ Since the Lokpal and Lokayukta would deal not only with public grievances but also with cases of allegation, one could at least safely double that figure - to 5,088. As the Director of Public Grievance had no jurisdiction over the Ministers and Secretaries to the Government, at least another five hundred additional complaints could safely be assumed to be filed against them, thus raising the year's total of complaints to Lokpal and Lokayukta, from Rajasthan State to 5,588. The estimate, one fears, may prove horrifying, for the Director of Public Grievances might not have been well known to the public, nor could he evoke much of its confidence on account of his being a part and parcel of the State Government.

Further, citing a more recent and appropriate example, the Lokayukta, and Uplokyukta of Rajasthan

114. Rajasthan, Department for the Removal of Public Grievance, First Annual Report (Jaipur, 1964-65), p.6.

received 1,782 complaints during the very first nine months of their office in the year 1973 - when people had hardly become aware of the existence of their offices. If they had functioned for the full 12 months they would have received something like 2,400 complaints at that rate of inflow of complaints. Now the point to be emphasized is this, that the Ombudsman of Rajasthan State (with a population of 25 million) could have received 2,400 complaints during the very first year inspite of the fact that they are empowered under the Act to only investigate the complaints involving allegations and not those involving public grievances. Thus, according to this estimate, proportionately speaking, the Lokpal and Lokayukta at the national level would have received nearly 57 thousand complaints even if their functions were limited to looking into the cases of allegation. Since the Lokpal and Lokayukta at the centre would also have the obligation to look into complaints involving public grievance, the figure could be safely raised to at least a hundred thousand cases per year.

It would also be appropriate here to draw upon the figures of complaints at the central level. During the fourteen month period between February, 1966 to March 1967, the Commissioner for Public Grievance in the Government of India received a total of 1,420 complaints.¹¹⁵ As the complaints from the public servants were outside of the jurisdiction of the Commissioner they are not included in

¹¹⁵. India, Ministry of Home Affairs, Annual Report (New Delhi, 1966-67), p. 107.

this total. Further, in comparison with the above figure of 1,420 complaints, officers in the various Ministries and Departments of the Government of India received a total of 68,440 complaints.¹¹⁶ Such a large number of complaints from the people in spite of the fact that these officers could neither enjoy the prestige nor the confidence of the people as the Lokpal or Lokayukta would do, these officials can be roughly expected to receive at least an extra 20,000 complaints a year, thus making a total of approximately 90,000 complaints per year.

Another significant argument in the chain of administrative objections pertains to the possible rise of bureaucracy and red-tape in the Office of the proposed Indian Ombudsmen. The vast size of the Indian population and consequently huge amount of complaints emanating therefrom, would obviously require a large army of administrative personnel to assist the Ombudsmen in discharge of their responsibilities. This might result in converting the Secretariat of these authorities into a big bureaucratic chaos by itself. If such a situation were to arise, then in that event who would look into citizens' grievances against the Ombudsmen's assistants is a question to which there could be no easy answer. In a study entitled "Citizen Administration and Lokpal" by Jagannadham and Makhija, while dealing with the organizational set up of the Lokpal's Office, they proposed a staff strength of 82

116. Ibid., p. 107.

including the Lokpal and two Lokayuktas. This calculation was unfortunately based on the misunderstanding of the authors about the right of public servants to lodge complaints with these authorities. They somehow felt as if the Lokpal and Lokayukta shall not have the right to entertain complaints from the public servants at all.¹¹⁷

However, as pointed before, this is not the case. They would entertain complaints of grievance from the public servants, although not in regard to personnel matters.

Further, experience shows that the estimate of staff strength by Jagannadham and Makhiya was not very accurate. For instance, the Secretariat of the Lokayukta and Uplo-kayukta of Rajasthan which caters to the needs of 25 million people and only in regard to cases of allegation, has a staff of as many as 36 persons. Thus, if a State like Rajasthan with a population of 25 million where the obligation requires a staff of 36 (excluding the Ombudsmen), by a crude mathematical calculation, the Lokpal and Lokayukta at the centre, who have to look into complaints of "allegation" as well as grievance of 624 million people, would require a staff of at least seventeen hundred ($36 \times 25 \times 2 = 1800$). How efficient and immune from red-tape and delay such an organization would be is anybody's guess.

Additionally, the issue to be examined here is that if a small country like New Zealand had to set up two

¹¹⁷. Sec. 4(1) of the Lokpal Bill, 1977.

Regional Offices of the Ombudsman to cater to the requirements of a population of 3.1 million with quick means of communication and transportation, how many such offices would a big country like India with no advanced means of communication require? Leaving aside the national ombudsman offices, if the relatively small and less populated Canadian Provinces of Alberta and Saskatchewan, (with such smaller populations, had to have regional offices for their Ombudsman, and a move to open five regional offices in the bigger Province of Ontario is already afoot,) how many regional offices of the central Ombudsmen shall India require to serve the vast multitude of masses residing in the villages not connected very well with even primary means of transport and communication. Experience of India with the office of the Commissioner for Scheduled Castes and Scheduled Tribes shows that 17 regional offices of the former had got to be established even when it was meant to serve a little less than one fourth of the Indian population and the number of Indian States was eighteen. As the central Lokpal and Lokayukta are to serve the total Indian population and the number of Indian states has also gone up to 22 (besides eight Union Territories), the number of regional offices may have to be much higher than that, especially so in view of the fact that states like U.P and Madhya Pradesh have populations 4 to 3 times that of the total population of Canada, respectively. And having opened such requisite number of regional offices at far-flung distances, how

effective would be the control of the Lokpal over these subordinate personnel? Also, what would be the guarantee against their becoming inefficient, dishonest, etc.?

Lastly, it would also be appropriate to examine the costs involved in setting up and maintaining such offices. Would it be justifiable in terms of the cost benefit ratio? Can India really afford the costs involved?

Jagannadham and Makhiya, in their study referred to above, estimated an annual expenditure of Rs. 8 01,600 only for emoluments to the Lokpal, Lokayuktas and their subordinates. Taking into account the inflation in the Indian economy that took place during the last 12 years and the revision of pay-scales, this figure could safely be rounded to Rs. 1 million per annum. Adding other expenditures for office accommodations; telephone; free-residential accommodation to the Lokpal and Lokayukta; stationary and postage, etc., the annual expenditure of the central office could involve an annual expenditure of at least Rs. 2 million per annum. If it is decided to open at least 22 regional offices to begin with, having minimum staff, it could roughly involve an annual expenditure of another two million rupees. Whether it is worth incurring an annual expenditure of 4 million rupees is an important question of public policy. In our opinion, however, good citizen-administration relationship constitutes an important condition for the success of democracy. Thus having once accepted democracy one must be prepared to pay its legitimate price. Hence, an annual expenditure of Rs. four million (or even more) should hardly

deter the public policy formulators from implementing the proposed Ombudsman plan. As a matter of fact, the comprehensive scheme of reforms in public administration together with the modified Ombudsman plan proposed by us in the last chapter of the thesis, might involve a much higher burden on the public expenditure, than a modest estimate of four million. But we would strongly urge their implementation because we feel a successful execution of such measures would result into real and "hidden savings" to the public expenditure over a course of time.

We proceed below to a discussion of the Lokpal Bill, 1977 and the Joint Select Committee's recommendations thereon.

THE LOKPAL BILL, 1977

The Lokpal Bill, 1977, differs significantly from all the earlier Bills on the subject in general and the 1971 Bill in particular in the following respects. First, the Lokpal Bill as the title of the Bill indicates, provides only for the appointment of a Lokpal and for Special Lokpal(s) on the recommendation of the Lokpal but no Lokayukta. Thus, the Lokpal Bill largely removes the objections raised against the hierarchical arrangement of Offices of Lokpal and Lokayukta recommended both by the ARC as well as the Bill of 1971. Lokpal and Special Lokpal(s) would enjoy almost an equivalent status under the proposed bill. The second major departure that the Lokpal Bill makes from the recommendations of the ARC as well as the 1971 Bill is that the Lokpal's

jurisdiction would comprise not the public servants as defined in the 1971 Bill, but the public men, including the Prime Minister of India and Chief Minister of the States as well as Members of Parliament and Legislatures of Union Territories. This provision appears to be unusual in so far as it brings in the State Chief Ministers, Members of Parliament and Legislative Assemblies of the Union Territories about which more will be said later. Third, it excludes investigation of the misconduct of public servants of all categories, unless it becomes necessary to conduct proper investigation against a public man. Fourth, the Bill also completely excludes the investigation of public grievances from the purview of the Lokpāl, who is only supposed to investigate the cases of misconduct on the part of public authorities. Fifth, the Bill confers power to try certain offences summarily and conduct searches and seize documents, etc. Sixth, a huge amount of Rs. 1,000 is to be charged to the complainant at the time of submission of the complaint, but this charge may be waived by the Lokpal in certain circumstances.

MACHINERY FOR ENQUIRIES:

The Lokpal Bill, 1977 provides that for purposes of making inquiries in respect of complaints under this Act, the President would, after consultation with the Chief Justice of India, the Chairman of the Council of States and Speaker of the House of the People, appoint by warrant under his hand and seal a person to be known as the Lokpal.¹¹⁸

118. Sec. 8(1).

Further, if the President was satisfied on a report from the Lokpal that it was necessary for the expeditious disposal of complaints under this Act, he might appoint one or more persons to be Special Lokpal or Special Lokpals, in the same manner as the Lokpal.¹¹⁹ The procedure of appointment of the Lokpal or Special Lokpals provided for under the Lokpal Bill seemed comparatively superior to the one prescribed by the ARC and the 1971 Bill. However, there is still some scope for its improvement, which could be done on the same lines as suggested by us for the 1971 Bill. The Lokpal as well as Special Lokpal(s) are to enjoy almost the same conditions of service except that, whereas the tenure of office of the Lokpal shall be normally five years, a Special Lokpal may be appointed even for a shorter period. In addition to this, whereas the Lokpal is eligible for re-appointment any number of times, the entire term of office of a Special Lokpal should not exceed five years in total.¹²⁰ Why there is this discrepancy in regard to the terms of the Lokpal and Special Lokpal is really difficult to comprehend. The remaining provisions pertaining to the conditions of service, oath of office, removal from office and right to select his own staff are by and large the same under the Lokpal Bill as under the 1971 Bill.¹²¹ Hence, whatever comments about them have been made while dealing with the 1971 Bill apply equally to

119. Sec. 6(1) and read with Sec. 8(2) & (3).

120. See Sections 5, 6, 7, 9 except for the fact that there is a mandatory provision for a Secretary to the Lokpal.

121. Sec. 10(1).

the provisions of the Lokpal Bill as well.

JURISDICTION OF THE LOKPAL:

Subject to the provisions contained in the Lokpal Bill, the Lokpal may inquire into any matter involved in, or arising from, or connected with any "allegation" of "misconduct" against a "public man":¹²² No matter in respect of which a complaint may be made under this Bill shall be referred for an inquiry under the Commission of Inquiry Act, 1952, except with the concurrence of the Lokpal.¹²³ A "public man" under the Bill implies:

a person who is or has been: (i) a member (including a Deputy Minister) of the Council of Ministers for the Union; (ii) a Member of either House of Parliament; (iii) the Chief Minister of a State; (iv) a member (including a Deputy Minister) of the Council of Ministers for a Union Territory; (v) a member of the Legislative Assembly for any Union Territory; (vi) a member of the Executive Council under the Delhi Administration; and (vii) the Mayor of a Municipal Corporation in any Union Territory." The term "public servant" under the Bill shall have the same meaning as in Section 21 of the Indian Penal Code.¹²⁴

A public man would be construed under the Bill to have committed an act of misconduct under the Bill:

"(a) if he is actuated in the discharge of his functions by motives of personal interest or other improper or corrupt motives; or
(b) if he abuses or attempts to abuse his position to cause harm or undue hardship to any other person; or

122. Sec. 10(2)

123. Sec. 2(e) (i) to (vii); and sub-section (h).

124. Sec. 2(g) and (h).

- (c) if he directly or indirectly allows his position as such public man to be taken advantage of by any of his relatives or associates¹²⁵ and by reason thereof such relative or associate secures any undue gain or favour to himself or another person; or
 - (d) if he fails to act in any case otherwise than in accordance with the norms of integrity and conduct which ought to be followed by the class of public man to which he belongs; or
 - (e) if any act or omission by him constitutes corruption.
2. Further a public man who: (a) abets (within the meaning of Section 107 of the Indian Penal Code), the commission of, or, (b) conceals or attempts to conceal from detection the commission of, misconduct of the nature specified by another public man, also commits misconduct.
 3. A public man, being a person who is or has been the Chief Minister of a State who:
 - (a) abets the commission of, or (5) conceals or attempts to conceal from detection the commission of, misconduct of the nature specified in sub-section (1) by any person who has been a member (including a Deputy Minister) of the Council of Ministers of the State, also commits misconduct and for this purpose references to "public man" and "public men" in sub-section (1) shall be construed as also including a reference to such other person."¹²⁶

The above presentation of the main discussion about the provisions of the Lokpal Bill, 1977, lead one to conclude the following. First, under the Lokpal Bill, the Lokpal is not to enjoy the power to undertake inquiries suo motu. In order to initiate an inquiry he has to have a complaint made

125. "Associate" in relation to a "public man" means any person in whom such public man is interested.

126. Sec. 3(1)(2) and (3).

to him by an aggrieved person. To this extent, his role under the Bill has been restricted in comparison to the role envisaged for the Lokpal under the 1971 Bill. Second, the term "inquiry" has been substituted for the term "investigation" in the 1971 Bill thus making the proposed institution something like a Permanent Tribunal of Inquiry. Third, whereas the 1971 Bill provided for the jurisdiction of the Lokpal in respect of complaints of "allegation" as well as "grievance", the Lokpal Bill completely excludes complaints involving cases of grievance from his jurisdiction, and substitutes the term "misconduct" for allegation of maladministration substantially enlarging it to include all kinds of cases of corruption, misuse or abuse of authority and abetment in the commission of such offences. This provision would obviously have the effect of changing the proposed office of the Lokpal to a mechanism for investigating the complaints of corruption among politicians. The manner in which the definition has been enlarged and defined was clearly indicative of the extent to which it was influenced by the political events immediately preceding the drafting of the Lokpal Bill. This was shown by the manner in which the term "public man" had been defined under the Bill, and also by its use instead of the term "public servant" under the earlier bills on the subject. For instance, the term included the Members of Parliament within the jurisdiction of the Lokpal, whose representative he was supposed to be. The present government led by Mr. Desai were keen to include

such Members of the Parliament as had indulged in massive misuse of authority and corruption or abetted therein. However, the above provision of the Bill appeared to be quite anomalous in view of the concept of the Ombudsman as an agent or spokesman of the Legislature. The same argument would apply with equal force to the sub-clause regarding inclusion of the Members of the Legislative Assemblies of the Union Territories. The fact that the Joint Select Committee has also approved of the provision regarding extension of the jurisdiction of the Lokpal over M.Ps and M.L.A.s showed that there is every chance of including them in the final text of the proposed legislation.¹²⁷ Additionally, the inclusion of State Chief Ministers but the exclusion of other ministers in the States, from the jurisdiction of the Lokpal also tended to amount to a legal-constitutional anomaly, in view especially, of the principle of collective responsibility of the Council of Ministers under a parliamentary system of government. Fortunately enough, however, the Joint Select Committee have recommended the exclusion of the Chief Ministers from the jurisdiction of the Lokpal as the State Governments themselves were competent to legislate on this subject.¹²⁸ The political reasons for the exclusion of other Ministers in the States and inclusion of State Chief Ministers within his purview are not difficult to explain.

127. The Statesman, (New Delhi) 20 July, 1978, p. 1.

128. Ibid., p. 1.

Keeping the close collaboration between the Central and State Governments during the national emergency in view, the present Desai Government at the centre wanted to bring all State Ministers within the jurisdiction of the Lokpal. But three states already had their own Ombudsman plans in operation all of which excluded the Chief Ministers' actions from the Ombudsmen's purview. Thus, for obvious political reasons the Desai Government did not want to exclude the Chief Ministers from the purview of the Lokpal, especially in view of the situation where even the Prime Minister was intended to be brought within it. For the simple political reason that the Chief Ministers, especially the ones who belonged to the Congress Party, blindly followed Mrs. Gandhi and her son, Sanjay Gandhi, they were very much a party to the commission of, and abetment in all kinds of excesses of power and abuse of authority as Mrs. Gandhi and her son. Hence, the decision to bring them within the jurisdiction of the proposed Lokpal. Likewise, the exclusion of the Secretaries and other officials to the Government also points towards the overwhelming political reasons that have influenced the drafting of the Lokpal Bill. In regard to the other ministers at the state level it was perhaps thought that once the Chief Ministers had been trapped, their colleagues might be caught hold of either under the provision regarding abetment or collective responsibility of the Council of Ministers.

Let us now move on to consider the other provisions of the 1977 Bill. Any person other than a public servant

shall have the right to make a complaint to the Lokpal.¹²⁹

The complaint shall be in the prescribed form and accompanied by an affidavit in support of the allegation.¹³⁰ The com-

plainant would be further required to deposit a sum of one thousand rupees in such manner and with such authority as might be prescribed,¹³¹ provided that the Lokpal, for sufficient cause to be recorded in writing, exempt a complainant from the requirement of deposit of one thousand rupees.¹³²

Two important gains likely to accrue from the above provisions need to be noted. First, the exclusion of all classes of public servants from the purview of the Lokpal coupled with the provision regarding a deposit of a thousand rupees with the complaint would certainly help the proposed Lokpal to avoid a great deal of the burden of frivolous complaints. Second, the discretion granted the Lokpal to waive this requirement of deposit in deserving cases should provide for sufficient flexibility to accommodate the complainants who cannot afford to do so. Perhaps more cautious about the adverse effect of false and frivolous complaints on the efficiency and morale of the public men than the Government, the Joint Select Committee have strongly recommended the incorporation of a provision for deterrent punishment of persons making such complaints.

129. Sec. 12(1).

130. Sec. 12(2).

131. Sec. 12(3).

132. Sec. 12(3) Proviso.

The Committee have recommended that: "A provision for punishment by imprisonment for a maximum period of one year and a fine up to Rs. 3,000 would be a salutary one and would help to a great extent in checking such complaints".¹³³ If the said provision is incorporated in the final draft, it would further protect the Ombudsman against cranks and quarrelsome persons who might otherwise flood him with all kinds of complaints.

As far as the time limit is concerned, the same time limit of five years (with a provision for relaxation of the limit at the discretion of the Lokpal), as was prescribed in regard to complaints of allegation of maladministration under the 1971 Bill, has been prescribed by the Lokpal Bill.¹³⁴

Besides the above provisions, almost identical ones to the 1971 Bill are to be found in respect of investigation/inquiry,¹³⁵ evidence,¹³⁶ reports,¹³⁷ secrecy of information,¹³⁸ contempt of Lokpal,¹³⁹ conferment of additional functions on the Lokpal,¹⁴⁰ protection,¹⁴¹ power to delegate,¹⁴² power of the President to make rules,¹⁴³

133. Statesman op.cit., p. 1.

134. Sec. 11(4).

135. Sec. 14.

136. Sec. 15.

137. Sec. 17.

138. Sec. 20.

139. Sec. 21.

140. Sec. 23.

141. Sec. 25.

142. Sec. 26.

143. Sec. 27.

savings,¹⁴⁴ etc. Thus, the comments made about these provisions while dealing with the 1971 Bill are equally applicable to the similar provisions in Lokpal Bill, 1977.

Nevertheless, three novel features of the Lokpal Bill deserve a special consideration here. These deal with (1) search and seizure; (2) complaints against the Prime Minister; and (3) the power of the Lokpal to try certain offences summarily.

If the Lokpal has reasons to believe that any document which, in his opinion, would be useful for, or relevant to, any inquiry, are secreted in any place, he may authorize any officer subordinate to him, or any officer of an investigating agency to search for and seize such documents. Further, if the Lokpal was satisfied that any document would be evidence for the purpose of any inquiry and that it would be necessary to retain the document in his custody, he might retain the said document till the completion of such inquiry.¹⁴⁵ Such a power of search and seizure has not been conferred on any Ombudsman even in the Nordic countries. This would certainly provide the Lokpal with a very powerful weapon to put the corrupt public men to task. At the same time we hope that this power would be used by the Lokpal very rarely and honest politicians would not be harrassed by the Lokpal while exercising this power.

The second special provision says that, if the Prime Minister received a copy of any complaint against

144. Sec. 28.

145. Sec. 16(1)(2).

himself or any information or report through the Lokpal, he would cause the same to be placed without delay before the other members of the Council of Ministers of the Union.¹⁴⁶

This appears a salutary provision in the Bill which aimed at bringing the Prime Minister at par with other members of the Council of Ministers. However, the Joint Select Committee have recommended a very sound amendment to this provision. They have suggested that, "in the case of the Prime Minister, the Speaker of the Lok Sabha should be the "competent authority" under the provisions of the proposed Bill, to examine and suggest action on the findings or report of the Lokpal on the complaints made."¹⁴⁷ Thus, if incorporated in the revised draft this provision would certainly constitute an improvement.

The third novel provision of the Bill pertains to the power of the Lokpal to try certain offences summarily. No ombudsman even in Scandinavia enjoys power to try any offences summarily. According to the provision contained in the proposed Bill, if, at any stage of a proceeding before the Lokpal, it appeared to him that any person appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence, the Lokpal might, if satisfied that it is necessary or expedient in the interest of justice that the person should be tried summarily, take cognizance of the offence and might, after giving the offender a reasonable opportunity of showing cause, try such

146. Sec. 18.

147. Sec. 22(1).

offender summarily, in accordance with procedure for such offences prescribed in the Code of Criminal Procedure, 1973 and sentence him to imprisonment for a term which may extend to three months or a fine which might extend to five hundred rupees or to both.¹⁴⁸

When any such offence as is described under Section 175, Section 178, Section 179 or Section 180 of the Indian Penal Code was committed in the view or presence of the Lokpal, the Lokpal might cause the offender to be detained in custody and may at any time on the same day, take cognizance of the offence, and after giving the offender a reasonable opportunity of showing cause, sentence the offender to simple imprisonment for a term which might extend to one month or to a fine which may extend to five hundred rupees, or both.¹⁴⁹ But in every case so tried by the Lokpal, he would have to record the facts constituting the offence with the statement (if any), made by the offender as well as the finding and the sentence.¹⁵⁰ However, any person convicted on a trial held under this provision might appeal to the High Court and the High Court shall be competent to alter or reverse the finding or reduce or reverse the sentence appealed against.¹⁵¹ The provisions of this section shall have effect notwithstanding anything contained in the Code

148. Sec. 22(2)

149. Sec. 22(3)

150. Sec. 22(4).

151. Sec. 22(5).

of Criminal Procedure. The words and expressions used in this section and not defined in the Bill shall have the same meaning as in the code of Criminal Procedure, 1973.

The aforementioned provisions of the Bill clearly indicate that the Lokpal envisaged under it would be more akin to a Permanent Tribunal of Inquiry. Enjoying a wide range of punitive powers, he would be much more like the Swedish-Finnish Ombudsmen. However, in terms of his status and independence from the judiciary, he would be very much inferior not only to the Swedish-Finnish Ombudsmen (who enjoy even the powers to prosecute the judges), but to the Lokpal envisaged under all previous drafts bills by the government. Further, being confined to conducting inquiry into the cases of misconduct, and that too only on the part of the public men to the complete exclusion of bureaucrats, his role would not quite clearly fit into the concept of Ombudsman.

Nevertheless, it must be admitted that barring the weakness regarding the exclusion of cases of public grievance from his jurisdiction completely, the scheme envisaged under the 1977 Bill has certain merits over the previous schemes. With the modifications and adjustments suggested by us, it definitely has the potential of serving as a "pilot scheme" for the future extension of the Ombudsman System to administrative sector. The provision of the 1977 Bill for the appointment of one or more Special Lokpals, is a highly commendable provision. Besides inducting a much

needed amount of flexibility into the operation of the scheme, it would facilitate a horizontal division of work among the Lokpals. This would certainly amount to an improvement over the 1971 scheme which provided for one Lokpal and one or more Lokayuktas in a vertical relationship. Thus, if the Bill were to be modified along the lines suggested below, it could be used as the basis for an extended scheme.

The term "public man" should be replaced by the term "public servant" as defined under the 1971 Bill, subject of course, to the exception, that the Prime Minister should also be brought within the fold of this definition. Such an amendment would certainly go a long way in removing the conceptual and constitutional anomalies that arise on account of the inclusion of the Members of Parliament and the Legislative Assemblies of the Union Territories, etc., within the Lokpal's jurisdictions. By mere virtue of the fact that the Members of Parliament, etc., do not enjoy any executive powers, the definition of "misconduct" in the Bill cannot be appropriately used while inquiring into cases of alleged misconduct against them. Besides, the Ombudsman himself is a representative - an appointee of the Legislature. How can he be empowered to investigate cases against the Legislators? Similar views on both these scores have been expressed by some of the members of the Joint Select Committee on the Lokpal Bill. To have a separate and limited definition of "misconduct" for the M.Ps and other categories of legislators, as the Joint Select Committee Report also seems to suggest,

is an absurd idea which would do nothing more than add to chaos in the functioning of the proposed institution. The fear that some vested interests might join hands in order to malign well meaning and dedicated M.Ps, etc., by filing complaints against them to prevent them from raising their voice against vested interests, might turn out to be true. Thus, on the whole, the idea of having legislators included within the jurisdiction of the Lokpal must be done away with.

Second, cases of "public grievance" should be brought within the jurisdiction of the Lokpal either by means of amendment of the definition of "misconduct" or by insertion of a new clause into Section 2 of the Bill. The initial increase in the case-load of the Lokpal on account of the widening of the definition of misconduct may be compensated for by means of another modification in the Bill. The Lokpal should not be required normally to handle complaints which are more than a year old. Such amendment besides reducing the possibility of overburdening of the Lokpal with complaints, would also help remove the impression from the public mind that the Lokpal Bill has been motivated by purely political considerations. Further, the State Chief Ministers should be totally excluded from the jurisdiction of the Lokpal as the States themselves are competent enough to legislate on the subject. The Joint Select Committee on the Lokpal Bill also seem to subscribe to this idea.

Once the amendments suggested above are made and the Act finally enacted, the Lokpal should be appointed and experiences gained by him during the first few years should

be carefully watched. A decision whether to extend the jurisdiction of this office to the lower levels or regarding appointing specialized ombudsmen for sectors like military, police or similar areas should be taken on the basis of the experiences of the Lokpal during these initial years in his office.

To sum up the discussion, it must be emphasized that the history of the Ombudsman plan in India has been different from its history especially in North America and England. Whereas the proposals for the setting up of Ombudsman offices in these countries, to begin with, met with some opposition from the parliamentarians or legislators, and the executive had to take the initiative in this behalf, in the case of India, the Members of the Indian Parliament have — always displayed the utmost amount of enthusiasm in impressing upon the Executive, the need for setting up an Ombudsman-like institution. Unfortunately, however, the Union Executive have always tried and so far have succeeded very well to delay the process of legislative enactment and thereby final appointment of such authorities.

With the end of the monopoly of the Congress Party rule at the Centre and in a number of States after the recent elections and the coming into power of the Janta Party, it was hoped that the dream regarding the appointment of an Ombudsman would come true at least this time. Popular hopes about the setting up of such an office were raised all the more on account of the fact that the Janta Party had promised the creation of an Ombudsman-like institution as part of its

election manifesto. But a year's time taken by the Joint Select Committee in the submission of its report and the resignation of the Home Minister, who engineered this Bill prior to that, seem to have once again delayed the process of appointment of the proposed Lokpal. As things stand today - whether the recent Lokpal plan would materialize and if so, when are questions still open to diverse answers.

CHAPTER FOUR

THE EXPERIENCES ABROAD AND LESSONS FOR INDIA

By now, a good deal of effort has gone into studying and analyzing the performance of Ombudsman offices, especially those of four Scandinavian countries and New Zealand. Of late, however, so great has been the attraction abroad for setting up similar offices and so shallow an understanding about these offices that a fresh look at the whole issue of adaptability of the Ombudsman office seems desirable. The following observations of an Ombudsman, in the context of the Danish office, seem to more or less characterize the whole situation in regard to foreign enthusiasm about the Ombudsman institution. The said Ombudsman remarked:

The Ombudsman institution is certainly justifying its existence, but it is not as great a thing as some people outside Scandinavia apparently believe.... If expectations about what Ombudsman can accomplish become too greatly inflated, their genuine achievements may be forgotten when the inflated expectations explode. For myself, I fear that the Ombudsman idea may have been a bit oversold by those who are enthusiastic about it.¹

Undoubtedly, "the Ombudsman concept" is very simple. It means only that a citizen aggrieved by an official's action or inaction should be able to state his grievance to an influential functionary, empowered to investigate and to express conclusions. Such a functionary does not operate in a vacuum.

1. Gellhorn, Ombudsmen and Others op.cit., p. 6.

Knowledge of an Ombudsman's surroundings is prerequisite to understanding how he works.^{2(a)} We would, therefore, briefly deal with the circumstances and the surroundings under which the four Scandanivian Ombudsmen and the New Zealand Ombudsmen officials function. As to the reasons for the selection of these five countries only, it would suffice here to say that the following important reasons weighed with us in their selection: (i) these are the countries that have had such institutions for the longest time and their Ombudsmen plans have served as models for the outside world; (ii) in all these five countries the Ombudsman offices have become institutionalized and their success is more or less conceded by all; (iii) all the five systems have drawn the attention of a large number of academics, especially the foreign ones, and, therefore, authentic published literature on them is available in abundance; and (iv) in a thesis like this, which was already going out of proportion, we had no option but to confine ourselves to a selected few only.

We, therefore, feel that an analysis of the factors and circumstances accounting for the successful operation of these five plans shall not only help us remove a certain amount of misunderstanding about them, but, also help us discern important conclusions about the suitability of the proposed Lokpal plan for India, discussed in the previous chapter.

2(a). Gellhorn, op.cit., p. 93.

1. THE SMALLNESS

The most significant features commonly characterizing all the five countries referred to above are - a relatively small area, a small population and consequently a small number of complaints requiring a fairly small staff to assist the Ombudsmen in discharge of their functions. For example, Sweden - the country of the origin of the institution is spread over 411,6148 square kms. and has a total population of 8.2 million. Finland - a country with very close historical ties with Sweden has a total area of 337,032 square kms. and a population of 4.7 million. Another country, namely, Denmark comprising some five hundred islands is almost one-third of the Georgia State of the U.S. in her area i.e. 43,069 square kms. and her population has reached the 5 million mark recently. Norway - the country of the mid-night sun - expands over an area of 386,308 square kms. and has a population of 4.1 million people. Lastly, New Zealand whose territory spreads over 268,675 square kms. presently has a population of 3.1 million. This smallness of all these five countries in terms of their respective area as well as population, coupled of course, with certain additional factors being dealt with below, has to a large extent helped them keep the inflow of complaints to their Ombudsmen in the vicinity of one thousand per year until recently. Obviously, enough, this kind of a consistency in the average number of yearly complaints has helped them preserve the small, informal

and efficient character of their offices. Thus, whereas the staff of the Norweigan Ombudsman has been limited, for a considerable period of time to four legal assistants; the staff of the Danish Ombudsman to that of seven legal assistants and five clerical employees.³ In New Zealand, in spite of the recent remodelling of the Ombudsman institutions as a collegial body and setting up of two regional offices at Auckland and Christchurch, the size of the staff has been kept well within thirty employees in all.⁴ Such a comparatively small number of complaints and an equally small number of subordinate staffs, has facilitated personal scrutiny of both the staff as well as the complaints, by the Ombudsmen themselves. Evidence is readily available to prove that even the envelopes containing complaints have been opened, in the first instance, at least by two Ombudsmen themselves.⁵ If one were to minutely examine the procedure of investigation followed by these Ombudsmen, how the small and homogeneous nature of the populations of these countries helps their Ombudsmen maintain high levels of efficiency, and conversely how it is going to hamper it in the case of giant countries like India with a highly heterogeneous population, would become at once clear. More than anything else, the linguistic

3. These are the old figures given by Gellhorn. As no latest information on this aspect was available, we could do nothing better then rely on them. op.cit., p. 29 and p. 185.

4. New Zealand, Report of the Ombudsman (Wellington Government Printer, 1977), p. 9.

5. For instance, for New Zealand see Larry B. Hill, The Model Ombudsman, (Princeton: Princeton University Press, 1976), p. 329. For Sweden see Gellhorn, op.cit., p. 211.

heterogeneity of the people is going to increase the size of the Ombudsman's office manifold.

But the aforementioned argument might be tantamount to an over-simplification if we were just to emphasize that the limited number of complaints received by all these five Ombudsmen owes itself entirely to their small area and population and that those are by far the only factors facilitating their efficiency. Had there been such a direct correspondence between the size of population of a country and number of complaints filed with the Ombudsman than probably the Ombudsman of Ontario Province who has to cater to the needs of a clientele of seven million people would not have had to handle 25,000 cases in 2.5 years. Further, the Ombudsman of Ontario would not have required a contingent of 104 whole-time and 14 part-time employees to assist him in discharge of his duties. Similarly, in a country like Israel with a population of 3.5 million, the Commissioner's would not have had to handle as many as 9,000 complaints a year and all Ombudsmen officials on the average a total of 2,5000 complaints per year.^{2(b)} Certainly, the explanation regarding the correspondence between smallness and number of complaints is not very satisfactory. There seems to be something more to the story, only a part of which is explained by the above analysis. And in fact this is so. Three important common factors or conditions obtaining in all these five countries to a greater or lesser

2b. Gerald E. Carden, To Right Wrong: The Ombudsman Experience in Israel (Los Angeles, California, School of Public Administration, Univ. of Southern California, 1977), p. 105.

extent have widely helped their Ombudsman offices keep the number of complaints within certain limits and their yearly averages more or less consistent till recently. These three factors or conditions are: (a) a very efficient, honest and dedicated civil service system; (b) the existence of other institutions performing a similar kind of function; and (c) good economic conditions and a relatively high level of literacy among their masses. How and in what manner did these help the Ombudsmen institutions of these countries in the performance of their duties, is being discussed below.

2. A. SOUND CIVIL SERVICE SYSTEM.

One of the most important factors accountable for the successful operation of Ombudsmen system in all these five countries is basically the existence of a sound, efficient and honest civil service. Ombudsmen offices in these countries have not come into being in response to any major scandals nor have these succeeded in revealing any sensational stories about what goes on inside their administrative systems. The two-fold purpose of the creation of such offices has been to provide a sense of psychological protection to both the citizens as well the civil service from the mutual excesses by each other, and keeping their public services alert and vigilant. The following remarks of a Leader of Opposition read together with the remarks of a former Swedish Ombudsman, Judge Belelius, bear the above point out, beyond doubt. The Leader of the Opposition said "that no Ombudsman has brought

to light a single major scandal during the thirty odd years of virtually continuous Social Democratic control over the Government. So long a rule, in his opinion, would certainly have produced skeletons that a diligent searcher might have found hidden in political closets".⁶ When asked to comment on this remark, Ombudsman Bexelius answered sharply: "This office has had no part in cleaning up large scale corruption in public administration because, fortunately, it has not existed".⁷ Hence, "The importance of the office cannot be measured by the scandals it has revealed but rather by the absence of any major scandals."⁸ Similarly, the following remarks of Gellhorn in the context of Norwegian Ombudsman institution also largely support the above contention. Gellhorn remarks:

Norwegian government was in the main so efficient, so fair, and so well intentioned that the Ombudsman has had to deal only with occasional aberrations instead of with major deficiencies beyond his capabilities. What he has done, he has done well. His suggestions have produced better results than otherwise have occurred in some scores of individual cases, and have presumably stimulated administrative self-improvement that is incalculably important.⁹

Somewhat similar views were expressed by a high official of the Norwegian Ministry of Justice. Defining the

6. Gellhorn, op.cit., p. 204.

7. Gellhorn, op.cit., p. 204.

8. Gellhorn, op.cit., p. 205.

9. Gellhorn, op.cit., p. 192.

3

Ombudsman's opinions and decisions as "Social Medicine Work",
he added:

For myself, I am convinced there was no real need for the Ombudsman. Administrative judgments in this country are not so frequent that we have to have a super-watchdog to guard against them. Still, I have to admit that the public is glad to have the Ombudsman's in the background. Rightly or wrongly - wrongly, in my estimation - the people think that administrators are going to become fairer and quicker and all that. Things have not been bad in the past and they won't be much different in the future. If the people think they are different, though, then the Ombudsman may make government more acceptable and more popular even though, there may be no real change.¹⁰

Almost the same kind of views were expressed by Sir Ronald Algie, a former Speaker of the House of Representatives of New Zealand about New Zealand's Ombudsman institution. Sir Algie remarked:

The Ombudsman system probably would not work well everywhere. It works well in New Zealand because we have a fine public service. Corruption is so rare as to be deemed virtually non-existent. Officials generally seek to serve rather than to defeat citizens. They give cases careful consideration, though of course that does not mean they invariably reach the best possible result. Our Ombudsman may stimulate officials to be a little bit better than they have been. But the Ombudsman system is succeeding here precisely because, really, there is not a staggering lot for it to do.¹¹

10. Gellhorn, op.cit., p. 193.

11. Gellhorn, op.cit., p. 153.

Further, the following views of Miss Penderson also bring out the same point, although in somewhat less explicit and emphatic terms. Miss Penderson remarks:

It would give a wrong picture of the Danish administrators, however, if it were not stressed that many of the principles laid down by the Ombudsman are already practised in Government Departments and by other public bodies. An Ombudsman appointed by the civil service might well have reached, in the majority of cases, the same decision as the Folketing's Ombudsman.¹²

Hence, from what has been said above two important conclusions can easily be deduced. First, the "Ombudsman-ship works in small ways its wonders to perform. Too exalted expectations are a disservice to the institution. The Ombudsman can be important without constantly dealing with important matters, just as judges are important though they deal chiefly with picayune conflicts. An Ombudsman's accomplishments are likely to be interstitial. He cannot create a solid structure of public administration. He can only do a bit of patching and sewing of minor rents in a basically sound fabric."¹³ Second, that the Ombudsman institution probably succeeds most in the countries in which the real need for having such an institution is by far the least. Conversely, therefore, it follows, that in a country like India in which the civil service traditions of honesty, integrity and dedication to the cause of public service are relatively

12. I.M. Penderson, "Danish Ombudsman" in Rowat (ed.), The Ombudsman. op.cit., p. 93.

13. Gellhorn, op.cit., p. 46.

very low, and the history of public administration full of scandals of all kinds, such an institution is most likely to become an innocent victim and die a pre-mature death. Such a situation is most likely to arise, especially in view of the high expectations that people already have from the proposed Lokpal. To state only a few instances, when the Lokpal Bill was piloted by the Home Minister in the Lok Sabha in July, 1977 a Member of Parliament speaking on the occasion said, that "if we had had a Lokpal before, India probably would not have had to face the Emergency." What a high level of expectation from the Lokpal. The Honourable M.P. expected the Lokpal to perform a task which the Indian Parliament, the Opposition; the mass media; the public opinion and above all the Indian judiciary could not perform. While making his statement in the House, the Honourable, M.P. never realized that: "The broad contours of public administration - how much power is to be conferred, for what purpose, upon whom to be exercised by what means - are primarily questions for political determination. No matter how able an Ombudsman may be, no matter how venerated he may be by the public, he cannot supplant the political processes that in the end control the administration of public affairs. No panacea for the cure of governmental ills exists. The greatest injustice to the Ombudsman would be to regard him as the possessor of a cure-all".¹⁴ The second instance of high

14. Gellhorn, op.cit., pp. 46-47.

expectations from the proposed Lokpal relates to a recent statement by the Prime Minister of India, Mr. Desai, himself. In response to a demand for a judicial inquiry against his son for alleged misuse of his influence as the Prime Minister's son, by his own former Home Minister and others, while totally rejecting the demand, Mr. Desai argued that anybody who is interested in such inquiry should file a complaint against his son to the Lokpal to be appointed shortly. Now, if the Lokpal really comes to be appointed in the near future, a complaint against his son is bound to be made perhaps on the very first day, thus putting the newly born office to a test of its strength and thereby making it controversial irrespective of the decision reached. Thus, to us it seems that, in a country like India in which the history of public administration is full of scandals some of which are known, most of which are unknown and many of which are being made known to the public by the several Commissions of Inquiry presently looking into the administration of public affairs, the Ombudsman institution is a real misfit. Moreover, it is most likely to become a greater misfit in view of the role for it envisaged under the latest plan. As pointed out above, the Ombudsman institution by its very nature is a misfit for investigation of complex cases of corruption. It is an institution essentially meant for the redress of minor grievances of the citizens against public administration. Investigation of the cases of corruption in public admin-

istration requires a much more elaborate and complicated mechanism.

3. THE EXISTENCE OF OTHER INSTITUTIONS:

Further, in all the five countries under consideration here, the Ombudsman institution is one of the several institutions meant for redressing citizens' grievances. Hence, the existence of such institutions in these countries, side by side with the Ombudsmen, prevents them from being overburdened with complaints.

Let us take the case of Sweden first. In Sweden the Ombudsman "is one of several institutions designated to curb the misuse of public power and in the view of the most Swedish writers, by no means the most important one. He fills in the gaps between the other countervailing forces, dealing with those questions of administrative negligence or error which cannot be dealt with by political or judicial means".¹⁵ Sweden has an Ombudsman's fellow watchman - the Chancellor of Justice (Justitiekansler or J.K) whose office has been in existence since 1713. Though legally still regarded as a "representative of the Crown" and defined constitutionally as the "Supreme Ombudsman of the King", the J.K holds a non-political office for lifetime. Performing a greater variety of functions, the J.K. resembles the Ombudsman (J.O) in one important respect, i.e. a considerable amount of his effort

15. Brian Chapman, "The Ombudsman" Public Administration (London) 1960, p. 306.

and time is devoted to receiving complaints from citizens and officials about judges and other officials. As no formal division of work has been made between the responsibilities of the two institutions, their activities overlap to a considerable degree. However, the J.K. handles a far lesser number of citizens' complaints than the JO. Until, 1968 there was also a separate Ombudsman for military affairs. The Ombudsman for civil affairs JO, of late also came to have a Deputy Ombudsman to assist him in the discharge of his duties. In the year 1968, the two separate offices for civil and military Ombudsman were merged to form a three-member collegial body. Later, the office of JO was again reorganized in 1976 to form a four member collegial Ombudsman's institution with one of the JO's being appointed as the Administrative Chief. All this had got to be done in order to facilitate the timely and smooth disposal of citizens' complaints against civil and military officials. Besides, there are a number of other Ombudsman-like officials in Sweden who are appointed by the Government or some other body instead of the Parliament, but who do perform an important role in the overall task of redress of citizens' grievances. These are, the Anti-trust Ombudsman (NO), appointed in 1954 who looks after the administration of the Restrictive Trade Practices Act; the Consumer Ombudsman (KO) appointed in January 1971 who is responsible for the protection of consumers interests; and the Press Ombudsman

(PO) established in 1969 and appointed by a Special Committee of three persons who examines complaints against violation of good newspaper practices.¹⁶ However, the above description regarding the Ombudsmen offices, should not mislead one to conclude that Sweden has all kinds of Ombudsmen but no other institutions for protecting citizens' interest against the administration. She in fact has both an Ombudsman systems as well as the administrative courts and her administrative courts enjoy powers much wider than those enjoyed by such courts in other countries like India.^{17(a)} The, Supreme Administrative Court, established in 1909 has all the powers in respect of cases it is given to decide that were formerly being exercised by the King in Council; it can concern itself with the issues of discretion as well as legality and can enter the finally dispositive orders it deems correct. The Supreme Administrative Court comprises sixteen members, who sit in three divisions, handling more than four thousand cases annually. Besides, a separate Supreme Court of Social Insurance has also been constituted with the authority to finally dispose of cases in that field.^{17 (b)}

Like Sweden, Finland also has both a Chancellor of Justice and an Ombudsman. Whereas the Chancellor of Justice is appointed by the President for his life time, the Ombudsman

16. Sweden, The Swedish Ombudsmen (Fact sheets on Sweden, 1977). pp. 1-2.

17(a). Kurt Holmgren "The Need for An Ombudsman Too" in Rowat (ed.) The Ombudsman

17 (b). Gellhorn, op.cit., pp. 200-201. op.cit., p. 226.

is chosen by the Parliament for a term of four years. The Chancellor's duty is to "see that the authorities and officials comply with the law and perform their duties so that no person suffers injury to his rights." The Ombudsman's obligation is to "supervise the observance of the laws in the proceedings of courts and other authorities." One basic difference between the Swedish J.K. and JO on the one hand, and the Finnish Chancellor of Justice and Ombudsman on the other is that in Sweden the JO enjoys somewhat greater prestige than the J.K, whereas in Finland the Chancellor's prestige has undoubtedly exceeded the Ombudsman's. Since 1971, an assistant Ombudsman has also been there who has been acting with the same powers as the Ombudsman except, for the fact that the Ombudsman is the head of the office and surveillance of legality of acts of the Council of State as well as prosecutions against Ministers and against the members of the two Supreme Courts belong exclusively to the competence of the Ombudsman. Further like Sweden, once again, Finland also has a system of Administrative Courts. The Supreme Administrative Court of Finland, presided over by a President and consisting of a fairly large number of members, has comprehensive powers to decide administrative appeals, not only from the decisions of inferior administrative authorities and the "provincial courts" but also from the decisions of the highest authorities, including the Council of State, i.e. the Cabinet.¹⁸ The Supreme Administrative Court of Finland

18. Gellhorn. op.cit., p. 66.

was reported to have handled as many as 106,123 appeals during the period 1932 to 1955 of which it transferred some 726 to the Cabinet as they involved cases of exercise of discretion.¹⁹ There are also some special tribunals to which civil servants can have easy access in personnel matters like dismissal, disciplinary action, etc. Last, but not the least "one very good reason, indeed perhaps the main reason, why neither the Ombudsman nor the Chancellor is overwhelmed by citizens' complaints is that grievances are readily redressed elsewhere, notably in the "provincial courts". These tribunals, at least one of which sits in every province, are catch all appellate bodies. They are not regarded in Finland as full-fledged courts because they maybe but rarely are presided over by the provincial Governor, and because the three members in each one of these tribunals may be assigned purely administrative duties when not fully occupied with judicial work."²⁰

In New Zealand also, quite apart from the judiciary, more than sixty administrative tribunals and authorities pass judgment upon individual cases both at the trial and appellate levels. While some matters committed to tribunals may be regarded as petty, their decisions almost surely dispose of more money and property each year than do the judgments of the Supreme Court. Besides, honorary Justices of Peace may

19. Gellhorn. op.cit., p. 66.

20. Gellhorn. op.cit., p. 67.

try certain minor offences in rural areas and, particularly on Saturday mornings in the cities. In addition, specially appointed judges preside over, respectively, the Courts of Arbitration (in labour relations matters), the Compensation Court (in Workmen's compensation cases), the Land Valuation Court and the Maori Land Court.²¹ The Administrative Division of the Supreme Court of New Zealand, established under the Judicature Amendment Act, 1968 has also been looking into appeals against the decisions of the various tribunals and other cases of grievance against administrative decisions brought before it.^{22(a)} In addition, the Law Revision Committee of the Parliament, established in 1937, has been assisting the Parliament to identify problems, discover legislative solutions and modernize statutes. The Committee though, consisting purely of honorary members and lacking necessary staff assistance has done quite a good amount of work in its area of operation thereby reducing a good deal of Ombudsman's burden in the field of legal reforms.

As far as Norway is concerned, besides the Ombudsman for Administration, Norway has a seven-member Defence Forces Ombudsman Board for Military Affairs. In addition to the Ombudsman for Administrative and for Military Affairs, there has also been appointed a Consumer Ombudsman. Appointed in 1972 under the Marketing Control Act, 1972, the Marketing Ombudsman is obliged to prevent the use of irresponsible, unsound or unreasonable marketing methods and thereby protect

21. Gellhorn. op.cit., pp. 96-97.

22(a). New Zealand, New Zealand Official Year Book (Wellington: Dept. of Statistics, 1977). p. 867.

the interests of the consumers.^{22(b)} The Norwegian Court procedure, also unlike various other countries, permits, interference by ordinary courts in administrative decisions. The ordinary law courts have developed their own power to invalidate unauthorized actions, those brought about without observance of prescribed procedures, or those based on an erroneous view of the law or in disregard of evidence. "This applies," an able Norwegian lawyer has written, "to decisions taken on every step of the administrative ladder - from the smallest local court to the King in Council; any country court may, for example, declare an act by the King to be invalid."^{22(c)}

The Standing Committee on Parliamentary Control of the Parliament (Storting), also enjoys wide powers of administrative control. The Committee, to which the Cabinet minutes and others reports of Government action are referred may bring to the Odelsting any matter in which the Government has apparently exceeded legal authority.^{22(d)} In addition to the above agencies catering to needs of redress of citizens' grievances, we also believe that Norway also has a Labour Court system and a number of administrative tribunals. Though, for want of complete information, nothing can be said with authenticity in this behalf, the provisions of rule 3 of the Ombudsman Rules direct him to ignore the Labour Court (which passes on disputes arising under the collective bargaining agreements)

^{22(b)}. Norway, Information (Oslo: Ministry of Foreign Affairs, 1976), p. 1.

^{22(c)}. Gellhorn. op.cit., 164.

^{22(d)}. Gellhorn. op.cit., pp. 160-161.

and tribunals established to deal with land lord and tenant controversies. This makes one believe that there must be some other tribunals also to pass on various other kinds of disputes. The provisions of the Ombudsman Act, regarding complete exhaustion of the administrative remedies by way of appeal to a higher administrative organ and the provision in the Ombudsman Rules prohibiting him from investigation of matters already decided by the Storting, the Odelsting or the Standing Committee on Parliamentary Control, also save him from over-burdening with complaints. We also believe that the existence of a statutory provision concerning handling of administrative matters which provides that the administration must specify the reasons for its decisions, either as its own initiative or upon request, must have prevented many occasions which would have otherwise led to citizens' grievances against administration.

Denmark, certainly appears to be an exception in this behalf. To the best of our knowledge, unlike Sweden, Finland and New Zealand, she does not possess an extensive network of administrative courts tribunals, nor does she have a military Ombudsman like Sweden and Norway. But still Denmark's Ombudsman institution has been a great success. On account of our inability to have access to more information on Denmark, we can do nothing more than stating the following factors, which might have helped the Ombudsman in the performance of his duties by keeping the inflow of the complaints to him, considerably down. But we are sure, the following

analysis on our part is based more on our ignorance than on the reality. First, we believe that the number of civil servants of the national government being just a little over a hundred thousand (which is two hundred and fifty thousand in New Zealand - with the smallest population among countries under discussion) should have helped her keep the number of complaints to the Ombudsman low. Second, limited jurisdiction of the Ombudsman over local government institutions should have been equally conducive to keeping the number of complaints to the Ombudsman, by citizens within reasonable limits. Third, non-appealability of certain decisions of the National Government (to any outside agencies - including the Ombudsman) except to the authorities within the National administration should have been an additional factor in preventing over-burdening of the Ombudsman with complaints. But signs of stress on the Danish Ombudsman are clearly visible now. The average case-load on him during last few years has risen to an average of nearly 2,000, from the earlier average of nearly a 1,000 cases a year.

The above discussions thus makes it clear that, in the countries under discussion with the exception of Denmark, the Ombudsman offices are not the only institutions engaged in the task of redress of citizens' grievances. There are other agencies of the government some of which, no less important than the Ombudsman themselves which share with them; the responsibility for the redress of citizens' grievances.

This point is often overlooked by foreign enthusiasts and researchers while they try to highlight the significance of the role of the Ombudsman offices in these countries. Hence, any suggestion regarding setting up an Ombudsman-type institution, especially in a big country like India, must take into account this important fact. Unfortunately, however, it seems that neither the ARC nor the Government of India ever tried to go into the real implications of adopting a two-man or even three-man Ombudsman plan for India in complete isolation from the need for necessary supplementary reforms in public administration so as to facilitate its successful operation.

4. THE HIGH LEVELS OF LITERACY AND ECONOMIC PROSPERITY

The Ombudsman institution further seems to suit the requirements of a society whose levels of literacy, political awareness, and economic prosperity are very high. A high percentage of literacy is perhaps the first condition for the creation of adequate political awareness among the masses, and for facilitating strict vigilance over public administration by them. The economic prosperity of the people in a country relieves them of many of their common worries and thereby helps in eliminating a great many opportunities where the public administrators might be tempted to misuse their power and authority and the occasions where the common man might feel tempted to corrupt them. Both high level of economic prosperity as well as the political awareness help

create a situation in which citizens' grievances against the administration could be relatively minimized. It is in this kind of a socio-economic milieu that the Ombudsman institutions perhaps operates successfully. Such kind of socio-economic conditions are prevalent, to a greater or lesser extent, in all the countries under discussion. For instance, according to a recent OECD publication, Sweden presently has the highest per capita income in the world. Besides, there is almost one hundred per cent literacy in the Swedish society - barring of course, the population of the pre-school age children. Norway - in the year 1975 had the third largest per capita GNP among the industrialized nations and it had been growing at that time twice as fast as in Sweden and in Switzerland - the two leading countries in the world. Though not as prosperous economically as the Scandinavian countries, New Zealand, can still be rated as economically prosperous and developed.²³ While we compare these facts with those about India, the situation looks not only dismal but quite frightening also. How can a country like India with less than 30 per cent literacy and a per capita income of less than U.S. \$160 per annum which has perpetually suffered from either the shortage of foodgrains or natural calamities like floods and famines, compete with these countries in terms of admin-

23. New Zealand is a highly developed society, and politics takes place within a context in which Government is very actively and deeply involved in society. New Zealand's extractive as well as distributive capabilities are well-developed. It is the third or fourth ranking nation and is close to the leaders in the measure (by different methods) of both governmental revenue and expenditure as a percentage of the Gross National Product. Hill, op.cit., p. 47.

istrative efficiency. The sheer size of the country and its administrative system and the colossal magnitude of its problems perhaps renders its soil infertile for engrafting the Ombudsman institution.

5. STRONG DEMOCRATIC TRADITIONS:

It needs be emphasized that a strong democratic tradition is also an essential ingredient for the successful functioning of the Ombudsman institution. Bestowed with very few powers, the institution derives its sole-authority from the support and acceptability it enjoys from the politicians, the press and in the ultimate analysis from the people at large. The first and the last weapon in the hands of an Ombudsman is publicity - whose effectiveness in the ultimate resort depends upon the existence of an effective public opinion. Further, the amount of independence and autonomy enjoyed by the Ombudsman also depends upon attitude of the Government towards the Ombudsman and their capacity to exercise self-restraint in the exercise of their powers and authority. In all the five countries under discussion the Ombudsmen institutions have succeeded essentially on account of the existence of a sound democratic fabric.

In this connection the following remarks of Judge Bexelius, a former Ombudsman in the context of Sweden, seem to be noteworthy:

The Ombudsman is, of course, both formally and in reality entirely independent of the Government. A remarkable feature of the Office, in the form given to it by

the Parliament of 1809, is its independence not only from the Government but also of Parliament itself. As experienced by the first holder of the office, the JO is made dependent only on the law. He decides for himself which subjects he shall investigate and makes his own decision on what action should be taken. This means that he does not seek any instructions as to which cases he should investigate. Nor will anybody in Parliament try to influence him to act in a certain direction when he is investigating a particular case. Through-out the history of the office there has been no evidence whatsoever in the annual reports to support an assumption that undue influences have been exerted on the Ombudsman.²⁴

Further, even the most political issue of the election of the Ombudsman in Sweden has been very wisely turned into a non-partisan exercise. In the nineteenth century and the first two decades of this century, the votes sometimes were divided among two or more candidates. But since World War I the elections have been unanimous, except occasionally for blank ballots.²⁵ The political parties in Parliament always try to unite in the selection of an Ombudsman. This is done to ensure that the JO's decisions are made without regard to political pressure, and that the general public may have full confidence in his political independence.²⁶

24. Alfred Bexelius, "The Ombudsman for Civil Affairs" in Rowat ed., The Ombudsman. op.cit., p. 24.

25. Ulf Lundvik, "Comment on the Ombudsman for Civil Affairs", in Rowat ed., op.cit., p. 44.

26. Alfred Bexelius. op.cit., p. 26.

But to be very sure this independence from political interference lies not in the institution itself but the tradition supporting it. The role of party considerations in the elections of the Ombudsman has been more prominent in Finland than in other Scandinavian countries. This was the case especially in the 1920's when the Members of Parliament still could be - and actually were elected - to the post of Ombudsman. This possibility was excluded in the New Parliament Act of 1928.²⁷ Another example of the strong democratic tradition in Finland is borne out by the following remarks of an official publication of Finland:

The terms of office of the Ombudsman was originally only one year. In 1933 it was changed to three years and in 1957 to four years. The term of office of the Ombudsman is not tied in with the parliamentary term which, too, is now four years. Thus, a possible dissolution of Parliament does not affect the term of the Ombudsman. The Ombudsman has several times been elected by a Parliament the term of which ended shortly thereafter. The Parliament cannot dismiss the Ombudsman during his term of office. The Parliament can give no directives or assignments to the Ombudsman, the only exceptions being the rare cases where a Minister (or the Chancellor of Justice) is to be prosecuted in the Court of Impeachment. The only "sanction" the Parliament can apply to the Ombudsman is that of refraining from re-electing him at the end of his term. Even this possibility does not seem to have played any significant role in actual practice.²⁸

27. Finland, The Parliamentary Ombudsman in Finland: Position and Functions. (Helsinki, 1976). p. 5.

28. Ibid., pp. 5-6.

Section I of Norway's Ombudsman Act, 1962, provides for the election of the Ombudsman by the Parliament. Although, the Storting is empowered to lay down general rules for the guidance of the Ombudsman, according to section 2 of the said Act he is to discharge the duties of his office "alone and independently of the Storting". The Ombudsman in Norway also is always chosen on non-partisan considerations, in a unanimous manner by the Members of the Storting. Further, Denmark and New Zealand, both constitutional monarchies of long standing, possess strong democratic traditions in no less measure than the three countries discussed above. The successive reappointments of both Professor Hurwitz - the first incumbent to the Danish office and Sir Guy Powles - the first incumbent to the New Zealand office until their retirement in spite of changes of the ruling parties shows the non-political nature of these appointments. Professor Hurwitz, the first Danish Ombudsman, elected in 1955, continued to serve as Ombudsman till 1971 when he finally retired on attaining the age of superannuation. Similarly, Sir Guy Powles, the first incumbent to the office of the New Zealand Ombudsman, appointed in 1962, was also re-elected at least five times and finally retired in early 1977 - on account of the same reason. But in a country like India, where democracy is still in its nascent stage and where even issues like the appointment of the Chief Justice²⁹ and other Judges³⁰

29. This happened in 1974 when the then Prime Minister of India, Mrs. Gandhi broke the convention of appointing the most Senior Judge of the Supreme Court of India as the Chief Justice. She superseded the three Senior Judges and appointed

of the Supreme Court of India have been matters of public controversy, and efforts to tamper with the freedom of the Judiciary have not been infrequent,³¹ how non-partisan would be the appointment of the Indian Ombudsman is any-body's guess. If active politicians, after having been defeated at the elections, could be appointed as Judges of the High Courts and the Supreme Court more or less on the basis of purely party consideration, why not the Ombudsman especially when the proposed bill does not debar such people from appointment. Why talk only of India? Even in a country like Canada, where the democracy has been in existence for more than a century and a decade and democratic traditions are much stronger than

Mr. Justice A.N. Roy as the Chief Justice of the Supreme Court supposedly on ideological considerations. Consequently the three Judges so superseded resigned. Recently, when the then Chief Justice of India, Mr. Justice H. Beg retired a public controversy arose about the appointment of the Chief Justice of India once again. Though Mr. Justice Chandrachud was the most senior Judge of the Supreme Court, a section of the people wanted his name to be discarded totally from such considerations, as during the emergency he delivered a judgment in the constitutional amendment case which was detrimental to the enjoyment of basic democratic rights by the people of India. However, disregarding such arguments completely, the Janta Government led by Prime Minister Desai decided to recommend his appointment as the Chief Justice.

30. A third such occasion of public controversy arose when one Mr. Justice Desai of the Gujarat High Court was appointed as one of the Judges of the Supreme Court of India recently. It was alleged that a number of Senior High Court Judges including some from the Gujarat High Court, were superseded by the Desai Government while recommending his appointment to the Supreme Court.

31. After the Allahabad High Court judgement Mrs. Gandhi in the election petition filed by her opponent, Mr. Raj Narain and declaration of National Emergency by her all the High Court were locked for three days. On re-opening of the High Courts, copies of the High Court judgement against Mrs. Gandhi were burnt by her supporters inside the Court compound and elsewhere publicly.

they are in India, two of the provinces, Ontario and Newfoundland, have had active politicians as their first Ombudsman. In our opinion there cannot be any act of greater injustice done to the Ombudsman institution, than to appoint an active politician as the first Ombudsman, even if the law permits it.

Further, since the only weapon in the hands of the Ombudsman being the publicity of his recommendations a responsible press is also a prerequisite to the successful functioning of the Ombudsman institution. Although the press Ombudsman relationship has not been uniform in all the five countries under discussion, all these countries have been fortunate in having a very responsible and mature press. The relationship between the Swedish and Danish Ombudsmen and their press has been much closer than what it has been in the case of the remaining three countries but it has never been bad in these three countries. If the press in these countries has not been over enthusiastic about reporting the Ombudsman's activities, it has at least never tried to scandalize them or give a political bias to its reporting which has helped a good deal in the proper functioning of the Ombudsman plans. On the other hand, the manner in which the Canadian press had dealt with the Ontario Ombudsman - legislative committee relationships and the coloured publicity given by the press to the handling of the very first case

by the Ombudsman of Nova Scotia could hardly be regarded as conducive to the institutionalization and successful functioning of these newly born Canadian offices. Similarly, the manner in which the local press has handled the conflict between the Lokayukta and Uplokayukta of Rajasthan State and the controversy between Maharashtra's first Lokayukta, Mr. S.P. Kotwal, and some of the Ministers³² in that State has done considerable damage to the prestige of these Ombudsmen. However, the real consumers of the publicity in any country are ultimately the people - or the public opinion at large. The effectiveness of the publicity to the Ombudsman's activities or recommendations - whether fair or colourful given by the press, depends upon the existence of a strong and vigilant public opinion. For want of this, publicity as such has no meaning. A well informed public opinion may not only easily differentiate between the fair and colourful publicity and the motives underlying it, but may even dictate very important political decisions of far-reaching consequence. The Water-gate and its aftermath is a concrete example of what a vigilant public opinion can accomplish. However, in a country like India, unfortunately such a well-informed public opinion does not exist at all. People generally go by the false propaganda or, at the most, with the direction of the wind. The growing popularity of Indira Gandhi in recent months despite all the offences committed by her during the emergency proves this point.

32. Statesman (New Delhi), August 2, 1977. p. 5.

The fate of the reports of the Scheduled Castes and Scheduled Tribes Commissioner; the Commissioner for Linguistic Minorities; the State Ombudsman discussed in the preceding chapter, and so also those of the Union Public Service Commission and the Auditor and Comptroller General of India, so far, shows that it is going to be no different in the case of reports of the proposed central Ombudsman.

THE PERSONALITY AND THE CHARACTER OF THE OFFICE-HOLDER

One of the most important factors contributing to or marring the successful functioning of an office of the Ombudsman is the personality and the character of the holder of this important office, especially the first incumbent. Although no historical account of the manner of the functioning of the first incumbents to the office of the Swedish and Finnish Ombudsmen institutions is available, yet the experiences with some of the recent plans lead one to conclude this. In fact, it would be no exaggeration to say that the variations between the levels of success of the different Ombudsman plans owe themselves largely to the personality and character of their Ombudsmen especially the first incumbents to these offices. This is so on account of the fact that an Ombudsman, like the Judges in the ordinary Courts, goes neither by the existing laws and precedents, nor merely by the existing administrative procedures and practices-like the judges sitting in the administrative courts; he has to go sometimes by the existing laws, regulations and procedures,

sometimes by purely humanitarian considerations and most of the time by nothing but simple common sense. In such a situation, the character and the personality of the Ombudsman becomes important. An Ombudsman of a low moral character has ample scope for misusing his influence and position without being easily detected by anybody, at least in the short-run. The danger of misuse of his positions by the Ombudsman is all the greater when the office is manned by one single individual, which until recently has been and still largely the case with Ombudsman offices.

The success of the Danish and New Zealand plans and the subsequent spread of the Ombudsman idea around the world in the past - 1962 period is largely attributed to the personality, the character and tactfulness of the two individuals - Professor Hurwitz, the first Danish Ombudsman, and Sir Guy Powles, the first New Zealand Ombudsman, respectively. The first incumbent to the office is important because to a very large extent the future of the Ombudsman office in a country depends on how he conducts himself vis-a-vis the politicians, bureaucrats, press and ultimately the people at large, and the kind of authority relationships that he is able to forge with each one of them. If the first incumbent is able to develop a strong and positive relationship with various other socio-political institutions in the society and create a positive impression about the role of his office, it might help the office in institutionalizing

itself. If, however, he were to fail in this task, then the institution might continue to exist as a formal-legal structure for any number of years without ever being able to justify it. At least, this is what is the impressions that one gains after going through the short history of such institutions in Denmark and New Zealand and comparing them with those of the history of such offices in India and other developing countries.

The significant role played by Professor Hurwitz in popularizing the Ombudsman idea not only in the English-speaking countries but even in the outside world is more than well known by now. Highlighting the important role of Professor Hurwitz in spreading the Ombudsmen idea Professor Gellhorn has observed:

In 1955 Denmark's first Ombudsman... took office and began to function.... For most of the world, however, interest in the ideas behind the Ombudsman institution was all but non-existent. Until Denmark's Ombudsman came on the scene. Then suddenly, the institution began to attract attention not only in the Western world, but also in Asia and Oceania. This spate of interest may be attributed in part to the enthusiasm with which the Danish Ombudsman himself - Professor Hurwitz - has described his work and its fruits.... Early success as a lecturer abroad created a lively demand for appearances by him in distant places. Responding to that demand, he widened the range of his expository and exhortatory efforts, almost as though he were an apostle of a new faith or, perhaps, the salesman of an export commodity. His persuasive speeches

and writings well supported by the writings of other enthusiasts, transformed an ancient institution into one seemingly designed specifically to meet the current needs. 33

Likewise, an Ombudsman of a country other than Denmark, talking about Professor Hurwitz, remarked "Professor Hurwitz is a man of magic - or perhaps I should describe him as a man with magic eyes who has bewitched the world. Because he has aroused so much admiration, the office he holds has seemed to be even more significant than it really is".³⁴ The greatest indication, however, of the impact made by Professor Hurwitz on a foreign audience is that after having spoken to academic audiences and appeared on television in Britain, after his return, he began to receive letters of complaint against British administration.³⁵

New Zealand's first Ombudsman, Sir Guy (whose office's origin itself is largely attributed to Professor Hurwitz's efforts), exercised no less influence on the adoption of the plan, especially within the British Commonwealth of Nations. The efforts of Sir Guy in a sense excelled those of Professor Hurwitz. Whereas, Professor Hurwitz only engaged in speech-making, foreign tours and writings, Sir Guy even undertook some kind of a consultancy work in regard to preparation of Ombudsmen plans for other Commonwealth countries. He prepared one such plan for Malaysia in 1968.³⁶

33. Gellhorn. op.cit., p. 5.

34. Gellhorn. op.cit., p. 6.

35. Rowat. op.cit., The Ombudsman Plan, op.cit., p. 119.

36. Rowat. op.cit., p. 134.

Gellhorn's discussion of the personality, character and tactfulness of these two individuals in his book, Ombudsmen and Others, (1966) gives an excellent account of their accomplishments during the first few years of their assuming their respective offices. Larry Hill's study of the New Zealand Ombudsman's office, The Model Ombudsman, (1976) inter alia largely corroborates the remarks of Gellhorn about the personality, character and tactfulness of Sir Guy Powles. Thus, we feel, it would be hardly necessary to repeat them here.

Hence, our discussion of the importance of the "personality factor" (especially in those countries which do not have a long historical tradition to lend necessary support to the Ombudsman institution) shows that there is a great element of chance involved in the successful operation of an Ombudsman plan. This significant fact is generally overlooked by the staunch supporters of Ombudsman institution.

Despite the existence of all kinds of institutions supplementing the efforts of the Ombudsmen and other factors conducive to successful functioning of such institutions, it would be misleading to believe that these officials have succeeded in solving all the problems of citizens' grievances.³⁷ Nor would it be correct to assume that they have succeeded in winning universal popular support for themselves. As

37. For instances like this refer to Gellhorn, op.cit., pp. 39-42 (for Denmark); pp. 87-89 (for Finland); pp. 152-53 (for New Zealand); p. 193 (for Norway); and pp. 242-44 (for Sweden).

a matter of fact, doubts are still expressed about the suitability of these antiquated institutions and their appropriateness to serve the needs ever-growing specialization in administration during modern times. In response to such a probing perhaps two of the five institutions have already undergone quite a good deal of transformation during the last few years. Nevertheless, the kind of transformation they have undergone is no less open to question. It would not, therefore, be inappropriate to discuss some of these issues below.

1. THE OUTMODED NATURE OF THE INSTITUTION:

A question has often been raised about the suitability of the Ombudsman institution - a purely generalist institution to oversee the activities of the highly specialized administrative systems during modern times. How far is this institution, originally born in Sweden in 1809, to serve the limited requirements of supervising the conduct of judiciary capable of meeting the needs of ever-expanding bureaucratic specialization in a wide variety of areas? What kind of basic background or training should an incumbent to this office be chosen from? Would a basic background in any branch of law suffice the needs of this office in the changed circumstances of today in which an Ombudsman might be required to handle a varied mosaic of citizens' grievances? Obviously, the answers to both the questions raised above shall be in the negative. No matter, how capable

an Ombudsman official is - irrespective of his background and experience, he will have to basically rely upon his common sense. His common sense may help him most of the time - but there might be a number of situations in which it might fail him as well. The following remarks of Gellhorn in this context seem to be note-worthy:

.... "common sense" does not solve every problem. Government becomes increasingly complex and specialized year by year, responding as it must to the complications and specializations of human affairs. The Ombudsman, no matter how intelligent and diligent, cannot be expected to grasp all the complications of every branch of civil administration. While respecting him personally and giving him credit for a high measure of success, officials do at times remark that the Ombudsman "just did not understand our problems"³⁸

The argument against the one-man institution and its suitability to serve the needs of modern administration assumes greater significance and validity in the context of relatively big countries like India. Obviously, in such countries - one-man institution cannot serve the purpose. Thus, a suggestion for the modification of the plan from essentially - one-man institution - to a collegial commission has often been advanced as an alternative. Therefore, it becomes obligatory on our part to examine the pros and cons of the suggestion regarding - Ombudsman Commission.

38. Gellhorn. op.cit., p. 243

2. THE ONE MAN VERSUS THE COLLEGIAL BODY:

Since one single person - Ombudsman - performing his duties with the assistance of a handful of legal and clerical assistants have experienced problems in coping with the citizens' grievances against administration even small countries (like the ones under discussion), experts on the subject like Rowat have suggested the setting up of a collegial Ombudsman Commission consisting of three or four persons for big countries such as India. However, the suggestion of Rowat appears to be somewhat naive while examined against the background of the four member Ombudsmen body of Sweden and a three - member body of New Zealand - both of which were constituted in 1976. In Sweden even after the reforms of 1976 and in spite of the existence of a system of Administrative Courts; a Chancellor of Justice and a number of executive Ombudsmen, the Ombudsmen have been receiving little over 3,000 complaints per year. The signs of stress on these Ombudsmen, although, to a lesser extent, are still visible.³⁹ Similarly, in New Zealand also, in spite of the existence of 60 administrative tribunals - Administrative Division of the Supreme Court, the constitution of a three member Ombudsman body has not been able to completely relieve them from the stresses and strains of coping with the complaints whose average has risen from a little over 1,000 per year to nearly

39. Gellhorn. op.cit., p. 255.

2,000. Examined against this background the suggestion regarding the constitution of a three or four member collegial body for a big country like India with neither a system of administrative courts nor tribunals certainly appears naive. Besides, there are other conceptual and practical problems involved in the introduction of a collegial plan in countries like India. Talking about the conceptual aspect of the suggestion regarding a collegial body, Gellhorn observed in the year 1966:

The "personal touch" by a great father figure is what everyone wants to preserve....This fact has rarely been looked squarely in the face. The ancient, more romantic conception of a knightly Ombudsman riding forth to battle single-handedly against every official has prevailed.⁴⁰

In pragmatic terms also, the idea of a collegial body of Ombudsmen for India is not free from problems. For instance, if all the members of a collegial body were to be drawn from similar background then such a body would hardly serve any useful purpose. Conversely, however, if they were all to come from different professional backgrounds, then in the absence of any guiding laws, principles or precedents, each one of them is likely to view the grievances differently thus creating a situation of utter confusion. The functioning of collegial schemes is still to be studied and evaluated, but one might be tempted to believe that such schemes might work well in countries like Sweden and New Zealand with a

40. See International Bar Association (Ombudsman Committee). Ombudsman And Other Complaint-Handling Systems Survey. (Allentown: Ombudsman Committee, 1977-78), p. 14 (for Sweden), and p. 12 (for New Zealand).

strong Ombudsman tradition and informal norms to contribute considerably towards their successful operation. But, in countries like India with no such tradition or informal norms, the very initiation of Ombudsmanship with collegial plans is bound to create serious problems - the signs of which are already visible, to a certain extent. The possibility of clashes among the Ombudsmen, based either on personality traits or professional background might develop. Besides, the introduction of a collegial Ombudsman plan in a country like India also carries with it the possibility of creating a big bureaucratic organization to assist the Ombudsmen.

Should the above discussion then imply that we are advancing a case against the Ombudsman institution in general and a collegial plan in particular? No! certainly not. We are firmly convinced that the question - whether to have an Ombudsman institution is basically a political decision. For every country, decisions on such questions come under the exclusive domain of the political executive. For India, such a decision has already been made by its decision makers. When that decision is going to be implemented or is it not going to be implemented at all? These are questions difficult to answer, But in case the decision comes to be implemented, we want to issue to all concerned, the following warning in the words of Gellhorn:

Whether the Ombudsman can do as much as some people hope and expect is highly problematical. Every democratic society is tempted to look for easy solutions of difficult political problems. The Ombudsman system, now experiencing considerable vogue, is one of those easy solutions that does not solve. In actuality, an Ombudsman is not a counter-vailing power in society. His criticisms alone cannot remake or undo malfunctioning governmental machinery. He cannot impose his contrary will on resistant officials. He can be effective precisely to the extent that they welcome having an impeccably objective eye peering over their shoulders at what they do. He is, in short, most useful in a society already so well run that it could get along happily without having his services at all.⁴¹

41. Gellhorn. op.cit., p. 192.

CHAPTER FIVE
TOWARDS A SUMMING UP

Our discussion of the Ombudsman idea and its implementation in the preceding chapters makes it sufficiently clear that the two predominant purposes underlying it are: promotion of good government and attainment of a balanced relationship between the citizen and administration. Thus, any judgement regarding the soundness of an Ombudsman plan or suggestions regarding its improvement should examine the extent to which these purposes are fulfilled. Unfortunately, however, in a country like India, attainment of even a basic functional citizen-administration relationship poses very difficult problems as both sides seem to suffer from a sense of mutual hatred, suspicion and alienation. In such a situation how a fruitful and democratically functional relationship between these two important segments can be brought about is a very knotty question to answer. But one thing about it is most certain: the question defies any ready-made solution in the form of an Ombudsman panacea, as many people tend to feel. In fact, the solution of this age-old problem requires a multifarious solution and dictates a multi-pronged attack on several fronts. What kind of multifarious solution we have in our mind, and on what fronts this problem of democratic imbalance and dysfunctionality must be fought in the Indian context, will be discussed later in this chapter. Before we proceed any

further, however, it is desirable to make a few points by way of clarifications.

When we look around we find that very few scholars in the field of public administration have attempted to conceptualize citizen-administration relationship in the context of a democratic system of government. Perhaps the best effort in this area has been done by Morris Janowitz and his associate in their study of public attitudes towards administration in Detroit, Michigan in 1958. Concerned primarily with the citizen's relationship to bureaucracy under a democratic system of government, Janowitz and associates held the view that: "A bureaucracy is in imbalance when it fails to operate on the basis of democratic consent.... The processes of imbalance are diverse but they can be schematized. The bureaucratic imbalance may be either despotic or subservient. Despotic implies that the bureaucracy is too much the master while subservient implies that it is too much the servant."¹ They then proceeded to suggest four requirements fundamental to the achievement of a democratic balance and consequently a good citizen-administration relationship:

1. Knowledge. The public must have an adequate level of knowledge about the operations of the public bureaucracy. Inadequate knowledge facilitates despotic administration, whereas too much knowledge theoretically could deprive an administrative agency of essential autonomy and produce subservient behavior.

1. Morris Janowitz, Deil Wright and William Delany, Public Administration And The Perspectives Toward Government In A Metropolitan Community, (Ann Arbor, Michigan. Institute of Public Administration, University of Michigan, 1958), p. 6.

2. Self-interest: The public must consider that its self-interest is being served by the public bureaucracy. As a check on the disruptive consequences of self-interested demands on the bureaucracy, the public must be aware simultaneously of the bureaucracy's capacity to act as a neutral and impartial agent in resolving social conflicts.
3. Principle-mindedness. The public must be of the general opinion that the public bureaucracy is guided in its actions by a set of principles guaranteeing equal and impersonal treatment. Administrative routines, however, must be sufficiently flexible to cope with individual differences in order to insure adequate dealings with clients.
4. Prestige. Public perspective toward the public bureaucracy must include adequate prestige toward public employment as compared with other types of careers. Very low and very high prestige values would interfere with the bureaucracy's ability to operate on the basis of democratic consent. A very low prestige could tend to bring about subservient administration, while extremely high prestige could tend to result in despotic administration.²

By meeting all these four requirements, the Ombudsman institution serves as one of the important devices for promoting balanced and democratically functional citizen-administration relationships. However, while resolving to introduce such an institution, especially in developing countries like India, it must be acknowledged that:

Because the ombudsman offices offer certain advantages in speed and cost, they are fast becoming the first resort of the aggrieved citizen. This situation, however, is fraught with dangers. First, a handful of overworked ombudsman offices cannot possibly provide full redress for citizen grievances. Second, officials know that only a small fraction of wrong they do comes to outside

2. Ibid., pp. 7-8.

attention. If all the initiative is left to aggrieved citizens, an even small proportion would come to light. Third, the right of wrong is left to the absolute discretion of the original offenders. They are free to deny redress, stall, set their own remedy, and discriminate between individuals in their remedial action. The ombudsman offices have no authority over them and the efficacy of public strictures depends on publicity from mass media, genuine public concern, and sensitivity to outside criticism by the public bureaucracy. Fourth, and probably the most important of all, underlying causes making for continuous wrong doing are not touched. Ensuring a workable constitution, an adaptive political system, and a streamlined governmental apparatus are considerably more important in preventing wrong from occurring in the first place than any subsequent investigations. The place to begin is not with the office of ombudsman but with the breakdown of governmental system that gives rise to legitimate complaints and undermines the credibility of public organizations. When the causes for breakdown are pinpointed, then consideration can be given to the Ombudsman device as one of many possible remedies.³

It is therefore from the above point of view that, the entire issue of suitability of the Ombudsman institution for India is being examined below.

It should also be pointed out here that in India, the problem which has long been agitating the minds of the people is that of corruption in the public administration and not so much the problem of redress of their grievances. So serious has been the magnitude of the problem of corruption that the grievances against the public administration are hardly regarded any problem at all by the people. Besides, at times, genuine

3. Gerald E. Caiden, To Right Wrong: The Ombudsman Experience in Israel (Los Angeles, California: School of Public Administration, USC, 1977), pp. 156-157.

difficulties are also experienced by the people in separating the cases of mere inefficiency and negligence from those involving corruption. Thus, very often all kinds of problems faced by the people in their dealings with the public administration are lumped together by them under the wide caption 'corruption'. Unfortunately, the Ombudsman institution has come to be identified in India as an effective device for tackling the problems of corruption in the public administration.⁴ It must, however, be pointed out that nowhere has the Ombudsman institution ever succeeded in exposing corruption or venality in public administration on a wide scale, let alone in contributing to its eradication. As pointed out earlier, the simple and informal character of the Office of Ombudsman hardly satisfies the complex needs of a machinery required for the removal of corruption from public administration. But there is no doubt about the fact that the present administrative situation of India does make the entire issue of the adoption of an Ombudsman plan a complicated affair. The nature of the problems of the redress of citizens' grievances, and that of the problems of removal of corruption from the administration, dictates the need for creating two distinct mechanisms for dealing with them, whereas, their interpenetration, warrants a unified approach towards their solution. Besides, there can be little doubt about the fact that the two maladies have much in common in terms of their implications for the maintenance and sustenance of democratic balance and healthy citizen-administration relationships within the Indian context.

4. For instance see the ARC Report on the Problems of Redress of Citizens' Grievances (New Delhi: Government of India Press, 1966), para. 9, p.8.

Having prefaced our subsequent analysis of the problem under study with these remarks, we switch on to a discussion of suggestions for reforms. The suggestions for reforms discussed below are broadly categorized as: (1) the politico-governmental reforms; and (2) the reforms of the proposed Lokpal plan, 1977. These reforms are discussed below.

1. THE POLITICO-GOVERNMENTAL REFORMS:

Modern politico-governmental frameworks, of necessity, tend to be complex. To fulfill their obligations towards their citizens governments during modern times employ a number of mechanisms, devices and procedural safeguards. That is why, in spite of the essentially organic nature of governmental framework, they tend to be organized into - the legislature, the executive, the judiciary, the public corporations, the independent regulatory commissions, the administrative courts, the administrative tribunals, etc. Each one of these organs has come into being in response to a specific need which no other organ can fulfill. But still, there exist certain gaps within and among each one of these organs which none of them can fill in. The Ombudsman institution by very virtue of its ability to fill a certain amount of loopholes existing within and between the legislature, the executive and the judiciary, is often misunderstood to be a panacea for all the ills of modern governments. Such a misconception of his role is more particularly prevalent in the developing countries like India,

which have long been facing the colossal problems of mal-administration and corruption. As a matter of fact, the Ombudsman institution is nothing more than a simple administrative device for the quick disposal of citizens' petty grievances against the administration by an independent authority, without much cost or personal labour on their part. It therefore fills in the loopholes within and among the major organs of the government to the extent that none of them meet this requirement. If the loopholes existing within and between the other organs of a government are too wide then, the Ombudsman institution cannot fill them in. For such serious or wide loopholes, the remedy should be found in the reforms of the ailing institutions themselves. In the Indian situation it seems the loopholes in the existing governmental institutions are much wider and the ailment much more serious. It would, therefore, appear to be more proper for us to start with the suggestions regarding the reforms in the existing governmental institutions. However, the reforms in the governmental institutions discussed below are only indicative and not exhaustive. Most of the reforms suggested have significant implications for the success of the Ombudsman plan proposed by us below.

1. A. REFORMS OF THE EXECUTIVE:

As the authority and the responsibility always go hand in hand, the removal of citizens' grievances and allegations of corruption should primarily be the responsibility of the agency which gives rise to them. No other

Organization or device, least of all the Ombudsman institution can supplant it. It can at the most supplement the efforts of the concerned administrative agency. The supplemental nature of the Ombudsman institution further dictates that the administrative system of a country should be reformed in such a manner that the need for Ombudsman's actions could be minimal. In the context of populous countries like India, it becomes all the more necessary to streamline and strengthen the internal arrangements and procedures for the redress of citizens' grievances. The present internal arrangements in regard to redress of citizens grievances are far from satisfactory. We therefore have the following suggestions to offer in this behalf. First, the ultimate responsibility for the quick and efficient disposal of citizens grievances and allegations should be borne by the Minister concerned of the Department/Ministry aided by his principal administrative adviser - the Secretary. There is a growing feeling among the public that many of the Ministers lack interest in ensuring efficient administration of their ministries/departments. Second, the present arrangement in the form of Chief Vigilance Officers in the Ministries/Departments and Vigilance Officers in other subordinate and attached offices of the Government of India seem to be far from adequate to deal with the citizens' complaints. Besides, the limited role of vigilance assigned to them, they are largely handicapped in the performance of their duties by the lack of adequate powers and inferior status conferred on

them. We therefore suggest that in each major Ministry/Department a separate bureau for dealing with the citizens' requests, complaints and matters of administrative reforms should be constituted and put under the charge of an official of the rank of Joint/Additional Secretary to the Ministry concerned. The Bureau may be bestowed with adequate powers to call for information and records, etc., from all the officers of the Ministry and recommend to them the necessary corrective or efficiency measures. Similar kinds of units which might also be labelled "Citizens' Bureau" may also be constituted under officers of appropriate rank in all other subordinate and attached offices of every Ministry/Department of the Government of India. Third, these reforms shall, however, fail to bear sufficient fruits unless they are supplemented by the following procedural reforms: (i) all applications or requests received by a public office must be acknowledged within two days of their receipt; (ii) all communications from citizens in the form of complaints should be separately diarised and sent directly to the Citizens' Bureau for disposal; (iii) the concept of delay according to the nature of request⁵

5. Jagannadham and Makhija in their study Citizen Administration and Lokpal (New Delhi, S. Chand & Co. 1969), p. 90 adopted a three-fold classification of citizen applications (requests), i) simple routine (i.e., acknowledgement, for information, reminders, asking for furnishing, applications of simple rules/precedents); complex (involving policy issues, relaxation of rules, etc.); and Sub-judice, (criminal offences, etc.), and suggest that 15 days time should be sufficient to the disposal of simple routine complaints and 30 days for the complex complaints, it would therefore be advisable to evolve some such criteria for the disposal of grievances.

must be spelt out in the administrative manuals or codes; (iv) acknowledgement letter must specify the tentative date for final disposal of the request; and (v) the administration's response to the citizen in the form of a decision must fully spell out the reasons for a specific decision at least when it is in the negative⁶. We believe, that in view of the experiences of the Scandinavian and certain other Ombudsman systems, some of the measures suggested by us, would help eliminate a large number of citizens' complaints to the proposed Indian Ombudsman office.

In order to ensure that the above measures are fully carried out by the public servants, it seems necessary that the Indian Penal Code (IPC) be amended on the Scandinavian lines. Barring Denmark, the penal codes of rest of the Scandinavian countries define inattentiveness, negligence, ignorance and rude behaviour on the part of public servants as criminal offence.⁷ Such an amendment in the IPC shall have a salutary effect upon the conduct of the public servants.

Further, with a view to eliminating administrative delays (a large part of which is inbuilt into the highly pyramidal structure of the Indian administration), it would also be necessary to implement the following recommendations

6. Such a provision exists in an Act in Norway, concerning the handling of administrative matters provides that the administration must specify the reasons for its decisions, either at its own initiative or upon request.

7. Gellhorn, Ombudsman and Others (Cambridge: Harvard University Press, 1966) p. 176.

of the ARC. Dealing with the issue of administrative delays and the need for streamlining the decision-making process the ARC recommended:

- (1) (a) There should only be two levels of consideration and decision below the Minister, namely, (i) Under Secretary/Deputy Secretary, and (ii) Joint Secretary/Additional Secretary/Secretary. Work should be assigned to each of these two levels on the lines of "desk officer" system. Each level should be required and empowered to dispose of a substantial amount of work on its own, and be given the necessary staff assistance.
- (b) The staffing pattern within a wing may be flexible to facilitate the employment of officers of various grades.
- (c) The duties and requirements of various jobs in the Secretariat at each of the two levels should be defined clearly and in detail on the basis of scientific analysis of work content.
- (2) For smooth and effective working of the proposed "desk officer" system, the following measures will be necessary:
 - (a) introduction of a functional file index;
 - (b) maintenance of guard files or card indices which will contain all important precedents;
 - (c) adequate provision for "leave" reserve;
 - (d) adequate stenographic and clerical aids.
- (3) (a) There should be set up in each Ministry or major administrative Department a Policy Advisory Committee to consider all important issues of long-term policy and to inject thinking inputs from different areas of specialisation into problem solving. The Committee should be headed by the Secretary of the Ministry

and should include the heads of the three staff offices (of planning and policy, finance and personnel) and heads of important substantive work wings (including those of the non-secretariat organisations integrated with the Ministry/Administrative Department). As and when necessary, the heads of the governing bodies of important research and training institutions and boards and corporations outside the Government may be co-opted as members of the Policy Advisory Committee for such items of work as are of interest to them.

- (b) Self-contained papers or memoranda setting out problems, their various alternative solutions, merits and demerits of each alternative, etc. should be prepared for consideration by the Committee, and the decisions arrived at should be duly recorded in minutes.⁸

As far as the issue of integrity and morality in public administration is concerned, the revelations of Shah Commission of Inquiry have established beyond doubt that they are very low. The following extracts from the final report of the Commission would suffice here to substantiate this somewhat harsh view of ours. In the chapter on Demolitions during the Emergency the Commission said:

The speed and scale of work in this direction surpassed all precedents and dwelling houses, shops, temples and places of worship and homes of the poor were destroyed...actions taken were ill-conceived and in certain cases cruelly inhuman. Thousands of people were uprooted after being given

8. India, the Administrative Reforms Commission Report on the Machinery of Government of India and Procedure of Work (New Delhi: mimeo). pp. 111-12.

only a few hours' notice, often without any warning and without remedy or compensation. The demolition activities were carried out ignoring the misery caused to men, women and children. Their life long abodes were demolished with the aid of bulldozers and their belongings were thrown and strewn all over the areas cleared by such operations....⁹

In another chapter of his final report Justice Shah further maintains:

It is necessary to face the situation squarely that not all excesses and improprieties committed during the Emergency originated at the political level. In the large number of cases it appears that unscrupulous and over-ambitious officers were prepared to curry favour with the seats of power and position by doing what they thought the people in authority desired....¹⁰

Justice Shah thus issued the following warning, especially to the politicians and civil servants:

If the officials on the one side, and the politicians on the other, do not limit their areas of operation to their accepted and acknowledged fields, this nation cannot be kept safe for a democratic system of government. Unless, this realization dawns upon the government and the people in all its serious implications specially, for the future, the labours of the Commission would be in vain...¹¹

Coming to the question of corruption in the Indian administration, it would not be inappropriate here to mention that it has been a very serious problem since the independence.

9. The Statesman (New Delhi), 1 September 1978, p. 4.

10. Ibid.

11. Ibid.

Several Commission of Inquiry were appointed from time to time in the past to look into the conduct of the Ministers and civil servants both at the Centre and in the States. All of them came out with some findings or the other which revealed the existence of corruption in the higher echelons of the Indian administration. But what a pity, never a serious action was taken on any of these reports.¹² With the appointment of a number of Commissions of Inquiry in the post-emergency it has been proved beyond doubt that corruption is widely rampant especially in the top political ranks. The recent allegations levelled by his own party men against Prime Minister Desai's son for exploiting his father's position for personal aggrandisement, has ripened the issue for public debate once again. In view of these developments we suggest the following measures for facilitating its effective functioning and for preventing the proposed Vigilance Commission from being swamped with complaints. First, we suggest that on a written demand by at least one third members of both Houses of Parliament, levelling specific charges of corruption against a Politician or civil servant, the matter should be referred to a Commission of Inquiry. If then the charges are proved, that individual should be debarred for life from holding such public offices. Third, we are in perfect agreement with the recommendations of Rajander Sachar Committee that the "ban on company contributions to political

12. The following reports of such Commissions are important, Das Commission, (1963-64); Iyengar Commission (1966-67); Iyer Commission (1967-70); Madhol Kar Commission (1968-69); Mulla Commission; Nair Commission, Thomas Commission (1969-71), Sir Mitter Commission (1973-74).

parties should not only continue but also the law should be so amended as to make giving or taking of such contributions punishable with fine and imprisonment."¹³ Fourth, we further suggest that it should be obligatory on the part of all M.Ps and Ministers and Secretaries to the Government to provide a declaration of their personal and family assets and liabilities at the time of their initial election/appointment and, thereafter, every year to the proposed Vigilance Commission. It should be obligatory on the part of all other classes of public servants to submit such statements to their heads of Departments. The statements submitted by the M.Ps, the Ministers and the Secretary (including Additional/Joint/Special Secretaries) to the Government should be incorporated by the Vigilance Commission in their annual report to be submitted to the Parliament.

Another link in the chain of executive reforms relates to the constitution of administrative tribunals. Their major advantages over regular courts are that they are cheap, quick and may have specialist expertise. A recent amendment to the Indian Constitution has now removed all the impediments in the way of developing an extensive system of administrative tribunals on the lines of Britain and New Zealand.¹⁴ One of the provisions in the amendment empowers the Parliament to provide for the adjudication and trial of personnel matters

13. The Statesman (New Delhi), 6 September, 1978, p.

14. 42nd Constitution (Amendment) Act.

under the Union or under the States'. Another provision in the same amendment confers upon the appropriate legislatures the power to legislate for the constitution of tribunals for the adjudication of disputes, complaints or offences in regard to: levy, assessment and enforcement of any tax; foreign exchange, import and export; industrial and labour disputes, and ceiling on urban property and exclude from such matters the jurisdiction of all courts except the Supreme Court of India. For the adjudication of personnel matters, Public Service Tribunals have already been constituted by a number of State governments. If tribunals for the adjudication of other kinds of disputes are also constituted, they would go a long way in relieving the ordinary courts as well as the proposed office of the Lokpal of a good deal of burden of case-loads. Under the modified Ombudsman plan suggested by us the jurisdiction of the Lokpal would not include those matters for which remedy by way of recourse to a tribunal is available. Thus the extension of tribunal system to other sectors of governmental affairs would undoubtedly reduce his burden of complaints.¹⁵

Last but not the least, a very significant reform also needs to be brought about in the present system of official secrecy. The out-moded system of official secrecy in India evolved by an alien power to serve the needs of the

15. Article 323-A and 323-B.

colonial empire has continued unabated even three decades after the independence. Excessive - secrecy attached to even very routine matters by the Indian bureaucracy at times appears to the citizens of independent India not only amazing but irritating as well. Besides, such an undue amount of official secrecy has its perils for an independent democratic nation and its citizens. Focussing his attention on this aspect of the problem Mr. Justice Shah (in his report of Inquiry into Emergency Excess) has said:

The trend in the democratic Governments today is in favour of more and more open functioning of the Government with less and less accent on secrecy. It has been established that the more the effort at secrecy, the greater the chances of abuse of authority by the functionaries. In this regard there is some serious thinking in certain foreign countries on the acts and related matters governing the official secrets. It is suggested that the Government may take into consideration the present trends in this regard in the democratic countries and avail of the benefit of their experience for such action as may be feasible, practicable and desirable in the context of our own peculiar needs and conditions.¹⁶

We are firmly convinced that if the Official Secrets Act be amended to bring it in tune with the requirements of a democratic government and right of public access to government information is enlarged, it would certainly contribute to the success of the proposed Ombudsman plan. A large number of wrong, partial, unjust and illegal actions on the one hand, and citizens' complaints and grudges against the administration on the other, result from this sacrament of official secrecy.

16. The Statesman, op.cit., 8.

Once, therefore, its scope is reduced, administrative maladies resulting therefrom, would also vanish to that extent - thereby reducing the burden on the complaint handling mechanisms.

I. B. REFORM OF THE JUDICIARY:

A number of reforms of the Indian Judiciary would also appear to be necessary from the point of view of providing greater protection to rights of the citizens as well as facilitating smooth functioning of the proposed office of the Ombudsmen. The proposed office of the Lokpal by its very definition as an Ombudsman-like office, would be merely a recommendatory authority. In the present dismal administrative situation of India, Ombudsmen would have to recommend the prosecution of a large number public servants. If unscrupulous officials could succeed in escaping the consequences of Ombudsmen's recommendations due to the inefficiency of the courts, then it would certainly result in compromising their position. The present levels of efficiency and backlog of cases of the Indian courts present a situation where a large number of citizens might be forced to approach the Ombudsmen out of sheer sense of helplessness. Nothing could be more suicidal for the Ombudsman institution than to be regarded as a substitute for the court system and swamped with all kinds of complaints which it is really incapable of handling. Hence, the reform of the judiciary.

As the most significant measure in that direction we suggest that Administrative Divisions of the High Courts and the Supreme Court should be set up. Such a reform would not only be necessary from the point of view of coping with the task of judicial review of cases involving exercise of discretion but also, determining appeals from administrative tribunals in such cases where they are appealable to these courts. An Administrative Division like this has been in existence in New Zealand since 1968. Set up under the Judicature Amendment Act, 1968, it has been functioning as a part of the New Zealand Supreme Court and thus, there hardly could be any doubt about its compatibility with the common law tradition. Comprising- four to six Judges assigned by the Chief Justices of the respective courts if constituted, the Administrative Division would help them dispose of a large number of cases of this kind, thereby enhancing their overall efficiency. Constitution of such divisions would further help these courts develop expertise in handling cases of administrative law including those involving exercise of discretion. Thus, it hardly needs be emphasized that these divisions would help reduce the burden on the Ombudsmen, both in direct, as well as indirect terms.

The second category of reforms envisaged by us relate to the appointment and other conditions of service of the Judges.¹⁷

17. For a detailed analysis of the problems pertaining to the administration of justice in India see: O.P. Motiwal, "Problems Relating To The Administration of Justice", Indian Journal of Public Administration, Vol. XX No. i, 1974, pp. 157-185.

In India, there has long been a feeling that the procedure of judicial appointments should be changed. As a result of pressure from the Bar the old practice of letting the Home Ministry handle the selection of Judges has subsequently been altered by creating a separate Justice Department under the Ministry of Law. But it is felt by many that it did not serve the purpose since the Justice Secretary was concurrently the Home Secretary. Also, it has been considered unfair to let a civil servant handle sensitive judicial appointments. The present Government, in keeping with its avowed intention of according to the judiciary complete independence and full respect, is keen to ensure that political prejudices are not imported into judicial appointments. The purpose, it is felt, could be served by giving the delicate task of preparing a panel of suitable persons for judicial appointments after due processes of consultation, to an autonomous body with a professional head.¹⁸ The sooner such a reform regarding the setting up of an autonomous Department of Justice is implemented the better. Undoubtedly, this reform would go a long way in ensuring the impartiality of Judicial personnel. However, to ensure their impartiality and independence further, their salaries and emoluments which have remained more or less

18. The Statesman (New Delhi) 29th April, 1977, p. 1.

constant for a considerable time must be raised.¹⁹ The unattractiveness of the conditions of service for Supreme Court and High Court Judges has prevented a large number of competent members of the bar from accepting such appointments. The Indian rupee has been considerably devalued ever since the last fixation of their salaries and the average amount charged by the practising members of the bar has been continuously rising, thus making these appointments un-lucrative for talented lawyers.

Another suggestion pertains to increasing the number of Judges (in addition to those appointed to the Administrative Divisions) of the High Court and Supreme Court for the quick disposal of their backlog of cases. It is said and rightly so, that justice delayed is justice denied, therefore, not only just but timely disposal of cases should also be the effort of any judicial system. No latest data is available with us to support our suggestion yet, by the end of 1970 there were more than 153,400 cases pending for more than two years in the Supreme Court and High Courts.²⁰ Further to give an overall picture about the backlog of criminal cases, it may be pointed out, that at the end of 1971 as many as 574,225

19. As a matter of fact, the Federal Court Order, 1937 fixed the salaries of the Chief Justice and Judges of the Federal Court at Rs. 7,000 and Rs 5,000 per month, respectively. The Constitutions of the Indian Republic reduced the salaries of the Judges of the Supreme Court, which replaced the Federal Court, with much greater power and jurisdiction at Rs. 5,000 and Rs. 4,000 respectively.

20. Ibid., p. 170.

cases were pending at the different levels of the Indian judiciary.²¹ To be very sure, the situation would be no better than that at the present moment. This heavy backlog of cases is partly on account of an inadequate number of Judges in these courts and also in part due to the practice of appointing the sitting Judges of these courts as the Chairman of Commissions of Inquiry, from time to time in the past. It is really unfortunate that instead of utilizing the services of the retired Judges for the quick disposal of their case-loads²² these bodies have been deprived of the services of their sitting Judges on account of their appointment as the Chairpersons of Inquiry Commission. This has no doubt further delayed the process of quick dispensation of justice. We, therefore, suggest that the number of High Court and Supreme Court Judges be substantially increased to cope with the growing backlog of cases. Increasing advantage of the services of retired Judges of the High Court and Supreme Court should also be taken as and when necessary.²³ Further, the District Judges who are presently allowed to hear appeals in cases involving amounts up to Rs. 20,000 be allowed to hear appeals involving amounts up to Rs. 50,000 so as to decrease

21. India, The Statistical Abstract (New Delhi: The Central Statistical Organization, 1975), p. 480.

22. A large number of the Commissions of Inquiry including those referred to at No. 8 above, were handed by the Sitting Judges of the Supreme Court and High Courts.

23. Article 128 the Indian Constitution provides for the utilization of the services of the retired Judges as and when the Chief Justice of the Supreme Court with the prior approval of the President deem it necessary.

the pressure of caseloads on the High Courts. It would also be worthwhile to consider the idea of constituting mobile courts, especially for the rural areas so to remove the tremendous amount of inconvenience caused to the poor masses in the countryside on account of absence of courts of law on-the-spot. Also, it would be highly desirable to constitute Special Courts for the trial of special kinds of cases or offences so that the immoral, corrupt, and rich persons may not take advantage of the existing provisions of the Criminal and Civil Procedure Codes to free themselves from the clutches of the law. Such special courts have been constituted in the past for instance for the trial of the assassins of Mahatma Gandhi. The Desai Government deserves all the credit for once again reviving the idea of special courts for the trial of those who had committed various kinds of offences during the recent national emergency.²⁴ The manner in which these people have been behaving before the Commissions of Inquiry by refusing to testify on oath and the manner in which they have been seeking stays of proceedings in the Courts seems sufficient to prove the ineffectiveness of the existing court procedures. But the matter should not end there only, as every case would not merit a trial by a special court it would be highly desirable to so modify the Criminal and Civil Procedure Codes so that the unscrupulous counsels may not be able to take advantage of delaying tactics by submitting frivolous objections

24. Recently in the month of August, a Bill entitled Special Courts Bill, has been referred to by the President to the Supreme Court for its advice on the constitutionality of the Bill.

or filing appeals and revision petitions in the Higher Courts against interlocutory orders of the lower courts only to benefit their clients.

The above reforms, however, would fail to bear sufficient fruits unless they are supplemented by another fundamental reform regarding provision of free-legal aid to the poor. There is no way that a common man in India can afford to pay the high cost of litigation - i.e. the exorbitant counsel fee, court fees and charges for getting copies of the Court judgements. No less an authority than the Law Commission of India has emphasized the fact that, "free legal aid to the poor is a service which the modern State and in particular, a Welfare State owes to its citizens. The State, therefore, must accept this obligation and make available funds for the same."²⁵

If all the above reforms are carried out perhaps then, the lost confidence of the common man of India in the Indian Judiciary can be regenerated. The confidence thus regenerated would help the proposed Ombudsman institution because every one would not rush to him with high expectations as the first and the last resort for resolving all kinds of problems. Availability of free legal aid would further facilitate the process of good government and better citizen-administration relationship as there would be a cadre of lawyers to tell the baffled and ignorant citizen whom to approach and when, for the redress of a particular kind of grievance.

25. India, Fourteenth Report of the Law Commission of India, Vol. i, 1963. p. 651.

Having discussed all these measures for reforms, it deserves to be pointed out, that Judges are also after all human beings and, therefore, as fallible as any other person. Hence, there is a need to guard against any possibility of misuse of powers by them. Though there is a provision regarding the impeachment of Supreme Court Judges by the Parliament and also regarding the impeachment of the High Court Judges - these provisions do not normally come into play. Nor are they sufficient for exercising close supervision over them on a regular basis. Thus, some kind of special machinery needs to be constituted for this purpose. We therefore, suggest that an all-India body consisting of five men of eminence in public life be constituted on the lines of the California Commission on Judicial Qualifications, to supervise the conduct of judicial personnel.²⁶ Having discussed these reforms that we assume to be complementary to and essential for the successful functioning of the proposed Ombudsmen institution, we proceed to the second part of our discussion; the Ombudsman plan that we intend to suggest.

II. THE PROPOSED OMBUDSMAN PLAN:

The foregoing analysis of the existing and proposed Ombudsman-type institutions shows that the scheme envisaged at present in this behalf comprises the two specialized bodies, the Minorities Commission and the Scheduled Castes and

26. For the details regarding the California Commission on Judicial Qualifications refer to: S.V. Anderson, "Proposals and Politics in S.V. Anderson (ed.) Ombudsman for American Government. (Englewood Cliffs, N.J.: Prentice Hall, Inc., 1968), pp. 152-55.

Scheduled Tribes Commission and the proposed Office of the Lokpal. Besides, there is the machinery of a Vigilance Commission to look into the allegations of corruption against public servants. In the earlier schemes of 1968, 1969, 1971 the machinery of the Central Vigilance Commission was intended to be wound up with the creation of the institution of the Lokpal and Lokayukta whereas under the proposed scheme of 1977 it is not so. The Central Vigilance Commission would continue to exist even after the setting up of the Office of the Lokpal. Hence, the present set-up existing as well as that proposed seems to suffer from the defect of unnecessary duplication of efforts and multiplication of agencies. Such an arrangement besides increasing the burden on public expenditure is fraught with the fear of creating unnecessary complications for both the innocent citizens as well as these agencies. In such a situation would it be at all advisable for India to have such a multiplicity of Ombudsmen? Can a poor country like India really bear the high costs involved in having so many organizations for redress of citizens' grievances and the investigation of their complaints of corruption? The answers to these questions are certainly in the negative. It would hardly seem worthwhile to increase the number of such mechanisms and create a situation of confusion and chaos for the common man. We therefore feel that in order to put the mechanisms for both the redress of grievances as well as investigation of allegations of corruption on a sound footing - what is called for is

an overhaul of the entire system. In our view, this goal can be accomplished by the reorganization of the present mechanisms through a constitutional amendment to provide for the creation of two high powered and specialized agencies for tackling these two different but inter-related problems.

We therefore visualize the integration of the four mechanisms (i.e. the three existing and one proposed) into two constitutional authorities - one for the removal of corruption from the administration and another for the investigation of citizens' grievances against it. The authority for the removal of corruption may be designated as the Vigilance Commission. The people have by now become quite familiar with this nomenclature and the functions associated with it, therefore, it would seem appropriate to retain the title - Vigilance Commission. Another authority (in which it is intended to integrate the entities of the present Minorities Commission and the Scheduled Castes and Scheduled Tribes Commission and incorporate the functions of the proposed office of the Lokpal), may be designated as the Lokpal and Human Rights Commission. The provisions for the Constitution of the State counterparts of these authorities should also be incorporated in the Constitution itself while amending it. In our view, it would be advisable to amend Article 350 (B) and Article, 338 of the Indian Constitution along the following lines to provide for the setting up of the two authorities referred to above.

II. A. THE VIGILANCE COMMISSIONS:

The Vigilance Commissions may be set up by amending Article 350 (B) of the Indian Constitution in the following manner:

Article 350 (B) (1) There shall be a Central Vigilance Commission to be appointed by a Committee - consisting of the Speaker of the Lok Sabha, the Deputy Chairman of Rajya Sabha and the Chief Justice of the Supreme Court - out of a panel of names prepared by the Committee on Petitions of the Parliament for this purpose;

- (2) There shall also be a State Vigilance Commission in each State appointed by a Committee consisting of the Speaker of the Legislative Assembly the Chairman of the Legislative Council and the Chief Justice of the State High Court out of a panel of names prepared by the Committee on Petitions, for this purpose;

Provided that in States where there is no Legislative Council only the Speaker and the Chief Justice shall constitute such Committee;

- (3) A Vigilance Commission shall consist of a Chairman and as many other members as the Parliament or a State Legislature, as the case may be, may from time to time, by law prescribe;
- (4) It shall be the duty of a Vigilance Commission to investigate the complaints of allegation of corruption against the Minister and Secretaries to the Government and such other classes of public servants as the Parliament or a State Legislature, as the case may be, may from time to time by law prescribe;

- (5) It shall also be the duty of a Vigilance Commission to submit at least one Annual Report, and as many Special reports on its work, as necessary to the President or the Governor, as the case may be. The President or the Governor, as the case may be, shall cause all such reports to be laid before each House of the Parliament or the State Legislature, within 90 days of their submission;
- (6) A Vigilance Commission shall function in collaboration with its Lokpal/Lokayukta and Human Rights counterpart for the disposal of borderline cases and also in the general pursuit of the goals of higher levels of efficiency and morality in public administration;
- (7) The Central Vigilance Commission, in addition to the performance of its duties, shall also have the power to issue general directives and guidelines to the State Vigilance Commissions; provided that no decision or recommendation of a State Vigilance Commission shall be questioned by the Central Vigilance Commission; and
- (8) A State Vigilance Commission, in addition to performing its own duties, shall also serve as the Regional Office of the Central Vigilance Commission for purposes of receipt and on word transmission of complaints from the residents of that State.

Such an amendment, once carried out, shall have the effect of conferring constitutional status on the Central and State Vigilance Commissions which are presently in existence and would ensure their independence from the executive. Further, upon those States by whom no effort was ever

made to constitute such organization or those which abolish them after their establishment, it would impose a constitutional obligation to constitute such bodies. Also, by providing for greater collaboration between the Central and State Commissions and between these Commissions on the one hand and the Lokpal/Lokayukta and Human Rights Commissions on the other, it would help improve the levels of efficiency and morality in the Indian administration. However, as the issue of the machinery for the removal of corruption from public administration is not the main concern of our study we would leave it here only so as to concentrate our attention on the area of our main concern.

II. B. THE LOKPAL/LOKAYUKTA AND HUMAN RIGHTS COMMISSIONS:

We further propose that in order to facilitate the setting up of Lokpal and Human Rights Commission at the central level and the State Lokayukta and Human Rights Commissions (SLHRCs) through a constitutional amendment, the following provisions might be inserted under Article 338 of the Constitution:

- 1) There shall be a Central Lokpal and Human Rights Commission to be appointed by a Committee consisting of the Speaker of the Lok Sabha, Deputy Chairman of the Rajya Sabha and the Chief Justice of India, out of a panel of names prepared by the Committee on Petitions of the Parliament;
- 2) There shall be a State Lokayukta and Human Rights Commission (SLHRC), appointed by a Committee consisting of the Speaker of the Legislative Assembly, Chairman of the Legislative Council

and the Chief Justice of the High Court, out of a panel of names prepared by the Committee on Petitions of the State Legislature;

Provided that in a State where there is no Legislative Council, only the Speaker of the Legislative Assembly shall be a member of such Committee.

- 3) A Lokpal/Lokayukta and Human Rights Commission shall consist of a Chairman and as many other Members as the Parliament or a State Legislature, as the case may be, may from time to time, by law prescribe.
- 4) It shall be the duty of Lokpal/Lokayukta and Human Rights Commission to investigate the complaints of grievances against the Ministers and Secretaries and such other classes of public servants as the Parliament or a State Legislature as the case may be, may by law prescribe;
- 5) It shall also be the duty of a Lokpal/Lokayukta and Human Rights Commission to submit one Annual Report and as many special reports on its work as necessary, to the President or Governor, as the case maybe. The President or the Governor, as the case may be, shall cause all such reports to be laid before each House of the Parliament/State Legislature within 90 days of their submission;
- 6) Notwithstanding the provisions contained in Section (6) above, nothing shall prevent a Member of a LHRC at the Central or State level to look into the grievances of any Minority, Caste or Tribe or vice-versa.
- 7) The Central Lokpal and Human Rights Commission shall have the power to issue general directives and guidelines to a State Lokayukta and Human Rights Commission;

Provided that no decision or recommendation of a State Commission shall be questioned by the Central Commission; and

- 8) A State Lokayukta and Human Rights Commission in addition to performing its duties under the Constitution shall also function as a Regional Office of the Central Lokpal and Human Rights Commission for purpose of receipt and on word transmission of complaints from the residents belonging to that State.

The Ombudsman plan suggested by us above would result in a number of advantages. First, it would confer a constitutional status on the authorities which would be set up under this plan. Second, it would reduce the number of agencies thereby reducing a great deal of confusion for the common man. Third, as the plan contemplates the amalgamation of the three existing agencies, it would facilitate the utilization of budgetary allocations for them, thereby reducing the burden on the public ex-chequer in overall terms. Fourth, as pointed out before, by providing for better co-operation and coordination with the State level and also with Vigilance Organization it would provide for better efficiency in the operation of the proposed plan. Fifth, it would impose a constitutional obligation on the part of both the Central as well as State Governments to constitute such Commissions. Sixth, constitution of such Commissions at the State level would obviate the need for constitution of the regional headquarters of the Central Commission. Last, as both the Minorities Commission as well as the Scheduled Castes and Scheduled Tribes Commission enjoy all India jurisdiction, there would be no constitutional problem in amending the Constitution along the line suggested above.

After having amended the Constitution an effort should be made to bring the Lokpal Bill, 1977 in conformity with the constitutional amendment in accordance with the broad-lines suggested below.

As a first measure towards bringing the Lokpal plan in conformity with the proposed constitutional amendment, the Bill should be redesignated as the Lokpal and Human Rights Commission Bill, 1977 and the word Lokpal should be substituted by the word Commission or Commissioner according to the nature of each provision. Second, the Lokpal Bill presently provides for the appointment of just one Lokpal although it does envisage the appointment of the Special Lokpal or Special Lokpals on a temporary basis. We therefore suggest that for the Section 4 sub-section (1) of the Lokpal Bill, the following may be substituted:

- 4(1) There shall be appointed, as Officers of Parliament and Lokpal and Human Rights Commissioners, one or more Ombudsmen.

The provision regarding Special Lokpals may be retained after necessary re-wording. Further, a new section in the revised bill might be inserted to read:

- 4(1) A. One of the Commissioners shall be appointed as Chairman of the Commission by the Committee, who would be responsible for the administration of its Office and coordination and allocation of work between the Commissioners.

In addition, it would also be necessary to replace Section 10 (1) of the Bill to read:

Subject to the provisions of the Act, it shall be a function of the Lokpal and Human Rights Commission to investigate any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to matter of administration and affecting any person or body of persons in his or its personal capacity, by any Minister or Secretary to the Central Government.

This amendment would imply that both the State Chief Ministers as well as the M.P.s would be completely excluded from the jurisdiction of the Lokpal and Human Rights Commission, a change about which we have already argued at length in chapter three. In order to eliminate the possibility of clashes between the proposed Commission and the Parliament, we would also suggest a provision similar to the following provision of the Norwegian Ombudsman Rules, also be inserted into the Bill;

If the matter giving rise to the complainant has already been considered by the Storting, the Odelsting (Lower House) or the Standing Committee on Parliamentary Control, the Ombudsman is barred from dealing with the complaint.

Such a provision would be quite compatible with the concept of Ombudsman as a representative of the Parliament. As the merger of the separate entity of the Scheduled Castes and Scheduled Tribes Commission would largely render the Standing Parliamentary Committee for the Welfare of S.Cs

and S.Ts superfluous, we suggest that this Committee be converted into a Committee on Administrative Control. The main function of this Committee should be to ensure the implementation of the recommendations of the CLHRC. Besides, the Committee, by suitable amendments into the Rules of Business, could also be empowered to investigate the complaints against M.Ps and submit its reports to the Parliament.

In order to ensure a greater amount of independence and continuity in office, it would be desirable to amend sub-section(1) of Section 6 to read as follows: The term of Office of a Commissioner shall be ten years or till the attainment of 72 years of age which ever is earlier. Such a provision would facilitate the appointment of retired Judges of the Supreme Court (whose superannuation age is 66 years) as Commissioners for at least six years. Besides, dissociation between the terms of Parliament and those of Commissioners would prevent partisan consideration from creeping into the selection of these officials. With such an amendment having been brought about, Sub-section 2 of the same section would become redundant and thus, should be completely deleted.

Similarly, Section 12 Sub-sections (1) and (2) should also be replaced by new provisions along the following lines. Presently, Sub-section 1 provides that: "Any person other than a public servant may make a complaint under this Act to the Lokpal", should be amended to read: Any person or body of persons aggrieved on account of an administrative

action by a Minister or Secretary to the Government, may make a complaint to the Lokpal and Human Rights Commission. Sub-section (2) insists upon a complaint being made in the prescribed form and accompanied by an affidavit in its support. We believe that in a country like India with less than 30 per cent literacy, the purpose of having an Ombudsman-like institution would be largely defeated if any specific form or observance of legal formalities is insisted upon. Elsewhere, since indications are that the Ombudsman institutions are serving the needs of relatively well-off sections in the society, prescription of such formalities is bound to hinder the Ombudsman's role as a 'little-man's watch-dog'.²⁷

We therefore suggest that not even a written complaint from the complainants who are unable to do so, should be insisted upon. We further believe that after the various reforms suggested by us in the first part of this chapter, it would be unnecessary to retain sub-section (3) of Section 12 prescribing a deposit of rupees one thousand with the complaint. We would thus suggest its complete deletion from the Bill altogether. However, in order to further safeguard the proposed Lokpal and Human Rights Commission against over-burdening with the unnecessary complaints, it might be advisable to insert a provision in the Bill along the following lines of Norwegian Ombudsman Rules, 1962.

²⁷. Caiden's study of the Israel Ombudsmen No. 3 above and Larry B. Hill's study of the New Zealand Ombudsman institution show that both the systems have tended to serve the needs of Upper and Middle Classes in those societies. For details see Caiden No. 3 pp. 136-37, and Larry B. Hill, The Model Ombudsman (Princeton: N.J. : Princeton University Press, 1976), pp. 121-124.

Section 5 of the Norwegian Ombudsman Rules,

1962 says:

If the complaint concerns a decision which the complainant according to administrative law or practice has a possibility to bring before a higher administrative organ for reconsideration, the Ombudsman shall not deal with the complaint unless he finds specific reasons for doing so without delay. The Ombudsman shall advise the complainant of the possibility he has to have the decision reconsidered by an administrative organ. If the complainant is barred from demanding such reconsideration because he has exceeded the time limit allowed for doing so, the Ombudsman shall decide whether, in view of the circumstances, he should nevertheless deal with the complaint.

However, to be fully effective, such a provision should be incorporated into the revised Bill together with the following amendment in the Indian Penal Code: An act of failure on the part of a Minister or Secretary, to take an appropriate and timely action on a citizen's complaint against a subordinate official shall constitute a cognizable offence under the Indian Penal Code.

Likewise, the remaining provisions in the Bill may also be revised to bring them in tune with the framework. Having adopted the above amendments and modifications in the draft legislation, these important things must be remembered. First, that the size of the Commission's Office must be kept very small. Every possible effort should be made to see to it that the Indian Ombudsman Commission's Office does not itself become a big bureaucracy. One way of accomplishing

this object could be to equip it with advanced electronic equipments like computers and xerox machines, etc. Second, the entire staff of the office must be very carefully chosen. The persons selected must not only be efficient, but honest and courteous also. Constant eye should be kept on their conduct. In no way should any opportunity be allowed to these employees to exploit their strategic positions. Third, after the setting up of the Commission, wide publicity should be given to the powers, functions, procedure of filing complaints and location of its office through all possible means. Radio, T.V., newspapers should all be used for this purpose. Leaflets and hand-outs should also be printed in all the fifteen regional languages and distributed widely in the remotest areas of the country.

Lest we be charged with misleading our readers, it would appear necessary to clarify that the reforms about the Ombudsman plan suggested above are no guarantee for the final success of the plan in India. They are just in the nature of enabling provisions for its success which the past experience and the present situation seem to suggest. The final success of Ombudsman plan in India, how-so-ever meritorious it might be, would in the ultimate analysis depend upon the following factors. First, the kind of expectations that the people of India have from this institution and the extent to which they are fulfilled by its functioning. Therefore, our advice would

be that undue expectations from the proposed institution should not be allowed to be raised. Second, the success of such an institution would depend upon the extent to which it is able to solicit the cooperation of the people's representatives, bureaucrats, the mass media and in the ultimate analysis, of the people at large or vice versa. Third, another important factor that would determine the extent of success of Ombudsman institution in India would be the extent to which the people are able to grow in terms of their political maturity and democratic surveillance of public administration. Nothing under the sun can substitute for the popular vigilance and surveillance over governmental institutions under a democratic system of government.

Hence, as an integrative and additive summary of what has been said by us thus far, it would seem to be most appropriate to quote the following remarks of Professor Gellhorn:

For one who thinks in American terms, the Ombudsman system seems a useful device for achieving interstitial reforms, for somewhat countering the impersonality, the insensitivity, the automaticity of bureaucratic methods, and of discouraging official arrogance. To rely on one man alone - or even a few men - to dispense administrative wisdom in all fields, to provide social perspectives, to bind up personal wounds and to guard the nation's civil liberties seems, on the other hand, an old-fashioned way of coping with the twentieth century. Ombudsmen, no matter how accomplished they may be, cannot replace all other mechanisms that make for governmental

justice and wisdom. They must be viewed as supplementers of, and not as substitutes for, legal controls.²⁸

28. Gellhorn, Ombudsmen and Others, (Cambridge: Harvard University Press, 1966), p. 255.

Annexure I

THE TEXT OF THE RESOLUTION ON PEOPLE'S PROCURATOR
(LOKAYUKTA) MOVED BY DR. L.M. SINGH VI
IN THE LOK SABHA ON THE 3RD APRIL, 1964

"This House is of opinion:

- (a) That an Officer of Parliament to be known as the People's Procurator (Lokayukta), broadly analogous to the institution of Ombudsman in Sweden, Denmark and New Zealand, be appointed under suitable legislation for the purpose of providing effective and impartial investigating machinery for public grievances, for eradicating corruption at all levels, for redressing administrative wrongs and excesses, for securing the liberties of citizens, and generally for strengthening the basic foundations of parliamentary democracy as a system of government;
- (b) That the People's Procurator should be a person of known legal ability and outstanding integrity and should be appointed by the President of India on the recommendation of both Houses of Parliament. The term of each Procurator shall be co-terminus with that of each Parliament and a Procurator shall not be eligible for re-appointment as such and shall not accept any office of trust or profit at the disposal or in the dispensation of the central government or any state government for at least ten years after his laying down the office of Procurator. The Procurator shall be removable only in

accordance with the procedure laid down in article 124(4)
of the Constitution;

(c) That broadly the People's Procurator or Lokayukta should
have the following powers and functions:

- (i) The Procurator shall have the power to
investigate any decision or recommendation
made or any act done or omitted, relating
to a matter of administration affecting any
person or body of persons in or by any of
Ministers and Departments or by any Minister,
offices, employee or member thereof in the
exercise of any power or function conferred
on him by any statutes, rules or directives.
The Procurator shall make general and
specific recommendations to the government
and shall suggest action against those, who
in the execution of their official duties,
have through partiality, favouritism or
any other cause or consideration, committed
any unlawful act or neglected to perform
their duties properly;
- (ii) The Procurator may make any such investiga-
tion either on a complaint made him in
accordance with requirements to be detailed
in a suitable enactment or on his own motion;
- (iii) Without limiting the foregoing provision,
the Procurator shall also investigate any

petition that may be referred to him by either House of Parliament or any Committee thereof subject to the Directives of the referring House or Committee and shall submit his report thereon;

- (iv) The powers of the Procurator shall be exercised in accordance with the principles and directives laid down in a motion to be passed by the House of the People and approved by the Council of States from time to time;
- (v) If any question arises whether the Procurator has any jurisdiction to investigate any case or class of cases, the Procurator may, if he thinks fit, apply to the Supreme Court for an advisory opinion in the matter;
- (vi) The Procurator shall have power to summon any documents or persons and shall have power to examine any person on oath;
- (vii) The Procurator shall in each case make at least one comprehensive report to Parliament on the exercise of his functions;

(d) That People's Procurators, with analogous powers and functions, should also be appointed in all the constituent states of the Indian Union, and that necessary steps should be taken expeditiously in order to suitably amend the Constitution and to enact legislation for effectuating the aforesaid purposes."

ANNEXURE II

(TO BE PUBLISHED IN THE GAZETTE OF INDIA, PART (1) SECTION (i))

No.II-16012/2/77-NID(D)
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

New Delhi-110001,

the 12th January, 1978.

RESOLUTION

Despite the safeguards provided in the Constitution and the laws in force, there persists amongst the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the effective enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in Central and State laws, and in Government Policies and administrative schemes enunciated from time to time.

2. The Government of India has, therefore, resolved to set up a Minorities Commission to safeguard the interests of minorities whether based on religion or language.

3. The Minorities Commission shall consist of a Chairman and two other members, whose term of office would not ordinarily exceed three years. The officer appointed as Special Officer

in terms of Article 350(B) of the Constitution will function as the Secretary of the Commission.

4. The Commission shall be entrusted with the following functions:

- (i) to evaluate the working of the various safeguards provided in the Constitution for the protection of minorities and in laws passed by the Union and State Governments;
- (ii) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards and the laws;
- (iii) to undertake a review of the implementation of the policies pursued by the Union and the State Government with respect to the minorities;
- (iv) to look into specific complaints regarding deprivation of rights and safeguards of the minorities;
- (v) to conduct studies, research and analyses on the question of avoidance of discrimination against minorities;
- (vi) to suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the Central or the State Governments;
- (vii) to serve as a national clearing house for information in respect of the conditions of the minorities; and
- (viii) to make periodical reports at prescribed intervals to the Government.

5. The headquarters of the Commission will be located at Delhi.

6. The Commission will devise its own procedures in the discharge of its functions. All the Ministries and Departments

of the Government of India will furnish such information and documents and provide such assistance as may be required by the Commission from time to time. The Government of India trusts that the State Governments and Union Territory Administrations and others concerned will extend their fullest cooperation and assistance to the Commission.

7. The Commission will submit an Annual Report to the President detailing its activities and recommendations. This will, however, not preclude the Commission from submitting Reports to the Government at any time they consider necessary on matters within their scope of work. The Annual Report together with a memorandum outlining the action taken on the recommendations and explaining the reasons for non-acceptance of recommendations, if any, in so far as it relates to the Central Government will be laid before each house of Parliament.

ANNEXURE III

(To be Published In The Gazette of India, Part I, Section (i)

MINISTRY OF HOME AFFAIRS
(GRIH MANTRALAYA)

New Delhi-110001
Dated 21 July, 1978.
30 Asadha, 1900.

RESOLUTION

No. 13013/9/77-SCT.I

Article 338 of the Constitution provides for the appointment of a Special Officer for the Scheduled Castes and Scheduled Tribes who is charged with the duty to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and to report to the President upon the working of these safeguards at prescribed intervals. In pursuance thereto, a Special Officer, commonly known as Commissioner for Scheduled Castes and Scheduled Tribes, is appointed by the President from time to time. Considering the magnitude of the problem, the Government are of the view that in addition to the functioning and authority of the Special Officer, these matters should appropriately be entrusted to a high level Commission consisting of persons of eminence and status in public life. The functioning of the Commission will not be lessening the authority of the Special Officer.

2. Government have accordingly decided to set up a Commission for this purpose which shall consist of a Chairman and not more than four other Members, including the Special Officer appointed under Article 338 of the Constitution. The term of office of the Chairman and the Member of the Commission will not ordinarily exceed three years.

3. The headquarters of the Commission will be located at New Delhi.

4. The functions of the proposed Commission will broadly correspond with the functions at present entrusted to the Special Officer under Article 338 of the Constitution and will be as follows:

- (i) To investigate all matters relating to safeguards provided for Scheduled Castes and Scheduled Tribes in the Constitution. This would, inter alia, include a review of the manner in which reservations stipulated in public services for Scheduled Castes and Scheduled Tribes are, in practice, implemented.
- (ii) To study the implementation of Protection of Civil Rights Act, 1955, with particular reference to the objective of removal of untouchability and invidious discrimination arising therefrom within a period of five years.
- (iii) To ascertain the socio-economic and other relevant circumstances accounting for the commission of offences against persons belonging to Scheduled Castes and Scheduled Tribes with a view to ensuring the removal of impediments in the laws in force and to recommend appropriate remedial measures including measures to ensure prompt investigation of the offences.
- (iv) To enquire into individual complaints regarding denial of any safeguards provided to any person claiming to belong to Scheduled Castes or Scheduled Tribes.

5. The Commission will devise its own procedure in the discharge of its functions. All the Ministries and Departments of the Government of India will furnish such information and documents and provide such assistance as may be required by the Commission from time to time. The Government of India trusts that the State Governments and Union Territory Administrations and others concerned will extend their fullest cooperation and assistance to the Commission.

6. The Commission will submit an Annual Report to the President detailing its activities and recommendations. This will, however, not preclude the Commission from submitting Reports to the Government at any time they consider necessary on matters within their scope of work. The Annual Report together with a memorandum outlining the action taken on the recommendations and explaining the reasons for non-acceptance of recommendations, if any, in so far as it relates to the Central Government will be laid before each House of Parliament.

ANNEXURE IV.

India: The Lokpal and Lokayuktas Bill, 1971*

A Bill to make provision for the appointment and functions of certain authorities for the investigation of administrative action taken by or on behalf of the Government or certain public authorities in certain cases and for matters connected therewith.

Be it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Lokpal and Lokayuktas Act, 1971.

*Bill No. III of 1971, as introduced in parliament (Lok Sabha) on 11 August, 1971.

- (2) It extends to the whole of India and applies also to public servants outside India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

(a) "action" means action taken by way of decision, recommendation or finding or in any other manner and includes failure to act; and all other expressions connoting action shall be construed accordingly;

(b) "allegation," in relation to a public servant, means any affirmation that such public servant,—

(i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(ii) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives; or

(iii) is guilty of corruption, or lack of integrity in his capacity as such public servant;

(c) "competent authority," in relation to a public servant, means,—

(i) in the case of a Minister or Secretary—the Prime Minister

(ii) in the case of any other public servant—such authority as may be prescribed

(d) "grievance" means a claim by a person that he sustained injustice or undue hardships in consequence of maladministration;

(e) "Lokpal" means a person appointed as the Lokpal under section 3;

(f) "Lokayukta" means a person appointed as a Lokayukta under section 3;

(g) "maladministration" means action taken or purporting to have been taken in the exercise of administrative functions in any case,—

(i) where such action or the administrative procedure or practice governing such action is unreasonably, unjust, oppressive or improperly discriminatory; or

(ii) where there has been negligence or undue delay in taking such action, or the administrative

procedure or practice governing such action involves undue delay;

(h) "Minister" means a member (other than the Prime Minister) of the Council of Ministers, by whatever name called, for the Union and includes a Deputy Minister;

(i) "officer" means a person appointed to a public service or post in connection with the affairs of the Union;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "public servant" denotes a person falling under any of the descriptions hereinafter following, namely:—

(i) every Minister referred to in clause (h),

(ii) every officer referred to in clause (i),

(iii) every member of the Council of Ministers in a Union territory, appointed under section 45 of the Government of Union Territories Act, 1963, and in the case of the Union territory of Delhi, every member of the Executive Council constituted under the Delhi Administration Act, 1966,

(iv) every person in the service or pay of,—

(a) any local authority in any Union territory, which is notified by the Central Government in this behalf in the Official Gazette;

(b) any corporation (not being a local authority) established by or under a Central Act and owned or controlled by the Central Government;

(c) any Government company within the meaning of section 617 of the Companies Act, 1956, in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government, or any company which is a subsidiary of a company in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government;

(d) any society registered under the Societies Registration Act, 1860, which is subject to the control of the Central Government and which is notified by that Government in this behalf in the Official Gazette;

(l) "Secretary" means,—

(i) a Secretary, a Special Secretary, or an Addi-

tional Secretary, to the Government of India in any Ministry or Department.

(iii) a Secretary, a Special Secretary, or an Additional Secretary, in the Cabinet Secretariat, Prime Minister's Secretariat or, as the case may be, the office of the Planning Commission.

and includes a Joint Secretary in independent charge of such Ministry, Department, Secretariat or, as the case may be, the office of the Planning Commission.

Appointment of Lokpal and Lokayuktas.

3. (1) For the purpose of conducting investigations in accordance with the provisions of this Act, the President shall, by warrant under his hand and seal, appoint a person to be known as the Lokpal and one or more persons to be known as the Lokayuktas or Lokayuktas:

Provided that,—

(a) the Lokpal shall be appointed after consultation with the Chief Justice of India and the Leader of the Opposition in the House of the People, or if there be no such Leader, a person elected in this behalf by the Members of the Opposition in that House in such manner as the Speaker may direct.

(b) the Lokayuktas or Lokayuktas shall be appointed after consultation with the Lokpal.

(2) Every person appointed as the Lokpal or a Lokayukta shall, before entering upon his office, make and subscribe, before the President, or some person appointed in that behalf by the President, an oath or affirmation in the form set out for the purpose in the First Schedule.

(3) The Lokayuktas shall be subject to the administrative control of the Lokpal and, in particular, for the purpose of convenient disposal of investigations under this Act, the Lokpal may issue such general or special directions as he may consider necessary to the Lokayuktas:

Provided that nothing in this sub-section shall be construed to authorise the Lokpal to question any finding, conclusion or recommendation of a Lokayukta.

4. The Lokpal or a Lokayuktas shall not be a member of Parliament or a member of the Legislature of any State and shall not hold any office of trust or profit (other than his office as the Lokpal or, as the case may be, a Lokayukta), or be connected with any political party or carry on any

shall be ineligible for further employment (whether as the Lokpal or a Lokayukta or in any other capacity) under the Government of India or under the Government of a State or for any employment under, or office in, any such local authority, corporation, Government company or society as is referred to in sub-clause (iv) of clause (k) of section 2.

(4) There shall be paid to the Lokpal and the Lokayuktas such salaries as are specified in the Second Schedule.

(5) The Lokpal and every Lokayukta shall be entitled without payment of rent to the use of an official residence.

(6) The allowances and pension payable to, and other conditions of service of, the Lokpal or a Lokayukta shall be such as may be prescribed:

Provided that,—

(a) in prescribing the allowances and pension payable to, and other conditions of service of, the Lokpal, regard shall be had to the allowances and pension payable to, and other conditions of service of, the Chief Justice of India.

(b) in prescribing the allowances and pension payable to, and other conditions of service of, the Lokayuktas, regard shall be had to the allowances and pension payable to, and other conditions of service of, a Judge of the Supreme Court of India.

Provided further that the allowances and pension payable to, and other conditions of service of, the Lokpal or a Lokayukta shall not be varied to his disadvantage after his appointment.

Removal of Lokpal or Lokayukta.

(1) Subject to the provisions of article 311 of the Constitution, the Lokpal or a Lokayukta may be removed from his office by the President on the ground of misbehaviour or incapacity and on no other ground.

Provided that the inquiry required to be held under clause (2) of the said article before such removal shall be held by a person appointed by the President, being a person who is or has been a Judge of the Supreme Court of India.

(2) The person appointed under the proviso of sub-section (1) shall submit the report of his inquiry to the President who shall, as soon as may be, cause it to be laid before each House of Parliament.

(3) Notwithstanding anything contained in sub-section

business or practise any profession and accordingly before he enters upon his office, a person appointed as the Lokpal or, as the case may be, as a Lokayukta, shall,—

(a) if he is a member of Parliament or of the Legislature of any State, resign such membership; or

(b) if he holds any office of trust or profit, resign from such office; or

(c) if he is connected with any political party, sever his connection with it; or

(d) if he is carrying on any business, sever his connection (short of divesting himself of ownership) with the conduct and management of such business; or

(e) if he is practising any profession, cease to practise such profession.

Term of office and other conditions of service of Lokpal and Lokayuktas.

5. (1) Every person appointed as the Lokpal or a Lokayukta shall hold office for a term of five years from the date on which he enters upon his office:

Provided that,—

(a) the Lokpal or a Lokayukta may by writing under his hand addressed to the President, resign his office;

(b) the Lokpal or a Lokayukta may be removed from office in the manner specified in section 6.

(2) If the office of the Lokpal or a Lokayukta becomes vacant or if the Lokpal or a Lokayukta is, by reason of absence or for any other reason whatsoever, unable to perform the duties of his office, those duties shall, until some other person appointed under section 3 enters upon such office or, as the case may be, until the Lokpal or such Lokayukta resumes his duties, be performed,—

(a) where the office of the Lokpal becomes vacant or where he is unable to perform the duties of his office, by the Lokayukta or if there are two or more Lokayuktas, by such one of the Lokayuktas as the President may by order direct;

(b) where the office of a Lokayukta becomes vacant or where he is unable to perform the duties of his office, by the Lokpal himself, or if the Lokpal so directs, by the other Lokayukta or, as the case may be, such one of the other Lokayuktas as may be specified in the direction.

(3) On ceasing to hold office, the Lokpal or a Lokayukta

(1), the President shall not remove the Lokpal or a Lokayukta unless an address by each House of Parliament supported by a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal.

Matters which may be investigated by Lokpal or Lokayuktas.

7. (1) Subject to the provisions of this Act the Lokpal may investigate any action which is taken by, or with the general or specific approval of,—

(i) a Minister or a Secretary; or

(ii) any other public servant being a public servant of a class or sub-class of public servants notified by the Central Government in consultation with the Lokpal in this behalf.

in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokpal, the subject of a grievance or an allegation.

(2) Subject to the provisions of this Act, a Lokayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant not being a Minister, Secretary or other public servant referred to in sub-section (1) in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, the subject of a grievance or an allegation.

(3) Notwithstanding anything contained in sub-section (2), the Lokpal may, for reasons to be recorded in writing, investigate any action which may be investigated by a Lokayukta under that sub-section whether or not a complaint has been made to the Lokpal in respect of such action.

(4) Where two or more Lokayuktas are appointed under this Act, the Lokpal may, by general or special order, assign to each of them matters which may be investigated by them, under this Act.

Provided that no investigation made by a Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall be open to question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

Matters not subject to investigation

8. (1) Except as hereinafter provided, the Lokpal or a Lokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action—
- (a) if such action relates to any matter specified in the Third Schedule; or
 - (b) if the complainant has or had any remedy by way of proceedings before any tribunal or court of law.
- Provided that the Lokpal or a Lokayukta may conduct an investigation notwithstanding that the complainant had or has such a remedy if the Lokpal or, as the case may be, the Lokayukta is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy.
- (2) The Lokpal or a Lokayukta shall not investigate any action—
- (a) in respect of which a formal and public inquiry has been ordered under the Public Servants Inquiries Act, 1850, with the prior concurrence of the Lokpal; or
 - (b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act, 1952, with the prior concurrence of the Lokpal.
- (3) The Lokpal or a Lokayukta shall not investigate any complaint involving a grievance against a public servant referred to in sub-clause (iv) of clause (k) of section 2.
- (4) The Lokpal or a Lokayukta shall not investigate any complaint which is excluded from his jurisdiction by virtue of a notification issued under section 18.
- (5) The Lokpal or a Lokayukta shall not investigate—
- (a) any complaint involving a grievance, if the complaint is made after the expiry of twelve months from the date on which the action complained against becomes known to the complainant;
 - (b) any complaint involving an allegation, if the complaint is made after the expiry of five years from the date on which the action complained against is alleged to have taken place.
- Provided that the Lokpal or a Lokayukta may entertain a complaint referred to in clause (a), if the complainant satisfies him that he had sufficient cause for not making the complaint within the period specified in that clause.
- (6) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokpal or a Lokayukta to question any administrative

- documents relevant to the investigation, as he deems fit.
- (2) Every such investigation shall be conducted in private and in particular, the identity of the complainant and of the public servant affected by the investigation shall not be disclosed to the public or the press whether before, during or after the investigation.
- Provided that the Lokpal or a Lokayukta may conduct any investigation relating to a matter of definite public importance in public, if he, for reasons to be recorded in writing, thinks fit to do so.
- (3) Save as aforesaid the procedure for conducting any such investigation shall be such as the Lokpal or, as the case may be, the Lokayukta considers appropriate in the circumstances of the case.
- (4) The Lokpal or a Lokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion—
- (a) the complaint is frivolous or vexatious or is not made in good faith; or
 - (b) there are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or
 - (c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.
- (5) In any case where the Lokpal or a Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.
- (6) The conduct of an investigation under this Act in respect of any action shall not affect such action, or any power or duty of any public servant to take further action with respect to any matter subject to the investigation.

Evidence.

11. (1) Subject to the provisions of this section, for the purpose of any investigation (including the preliminary inquiry, if any, before such investigation) under this Act, the Lokpal or a Lokayukta may require any public servant or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.
- (2) For the purpose of any such investigation (including

action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion cannot be regarded as having been properly exercised.

Provisions relating to complaints.

9. (1) Subject to the provisions of this Act, a complaint may be made under this Act to the Lokpal or a Lokayukta—
- (a) in the case of a grievance, by the person aggrieved;
 - (b) in the case of an allegation, by any person other than a public servant.
- Provided that, where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate or, as the case may be, by any person who is authorised by him in this behalf.
- (2) Every complaint shall be made in such form and shall be accompanied by such affidavits as may be prescribed.
- (3) Notwithstanding anything contained in any other enactment, any letter written to the Lokpal or a Lokayukta by a person in police custody, or in a gaol or in any asylum or other place for insane persons, shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such gaol, asylum or other place and the Lokpal or Lokayukta, as the case may be, may, if satisfied that it is necessary to do so, treat such letter as a complaint made in accordance with the provisions of sub-section (2).

Procedure in respect of investigations.

10. (1) Where the Lokpal or a Lokayukta proposes (after making such preliminary inquiry, as he deems fit) to conduct any investigation under this Act, he—
- (a) shall forward a copy of the complaint or, in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefor, to the public servant concerned and the competent authority concerned;
 - (b) shall afford to the public servant concerned an opportunity to offer his comments on such complaint or statement; and
 - (c) may make such orders as to the safe custody of

the preliminary inquiry), the Lokpal or a Lokayukta shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of any document;
 - (c) receiving evidence on affidavits;
 - (d) requisitioning any public record or copy thereof from any Court or office;
 - (e) issuing commissions for the examination of witnesses of documents;
 - (f) such other matters as may be prescribed.
- (3) Any proceeding before the Lokpal or a Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.
- (4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of any investigation under this Act and the Government or any public servant shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any enactment or by any rule of law in legal proceedings.
- (5) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document—
- (a) as might prejudice the security or defence or international relations of India (including India's relations with the Government of any other country or with any international organisation), or the investigation or detection of crime; or
 - (b) as might involve the disclosure of proceedings of the Cabinet of the Union Government or any Committee of that Cabinet or of the Cabinet of the Government of any Union territory or of the Executive Council constituted under the Delhi Administration Act, 1966, or of any Committee of such Cabinet or Executive Council,
- and for the purpose of this sub-section a certificate issued

by a Secretary certifying that any information, answer or portion of a document is of the nature specified in clause (a) or clause (b), shall be binding and conclusive.

(6) Subject to the provisions of sub-section (4), no person shall be compelled for the purposes of investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a Court.

Reports of Lokpal and Lokayuktas

12. (1) If, after investigation of any action in respect of which a complaint involving a grievance has been or can be or could have been made, the Lokpal or a Lokayukta is satisfied that such action has resulted in injustice or undue hardship to the complainant or any other person, the Lokpal or Lokayukta shall, by a report in writing, recommend to the public servant and the competent authority concerned that such injustice or undue hardship shall be remedied or redressed in such manner and within such time as may be specified in the report.
- (2) The competent authority to whom a report is sent under sub-section (1) shall, within one month of the expiry of the term specified in the report, intimate or cause to be intimated to the Lokpal or, as the case may be, the Lokayukta, the action taken for compliance with the report.
- (3) If, after investigation of any action in respect of which a complaint involving an allegation has been or can be or could have been made, the Lokpal or a Lokayukta is satisfied that such allegation can be substantiated either wholly or partly, he shall by a report in writing communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.
- (4) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate within three months of the date of receipt of the report, the Lokpal or, as the case may be, the Lokayukta, the action taken or proposed to be taken on the basis of the report.
- (5) If the Lokpal or the Lokayukta is satisfied with the action taken or proposed to be taken on his recommendations or findings referred to in sub-sections (1) and (3), he shall close the case under information to the complainant, the public servant and the competent authority concerned, but where he is not so satisfied and if he considers that the

to sub-section (2) of section 10, be treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872, no Court shall be entitled to compel the Lokpal or a Lokayukta or any public servant to give evidence relating to such information or produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars, —

- (a) for purposes of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report; or
- (b) for purposes of any proceedings for an offence under the Indian Official Secrets Act, 1923, or an offence of giving or fabricating false evidence under the Indian Penal Code or for purposes of any proceedings under section 15; or
- (c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokpal or a Lokayukta, as the case may be, with respect to any document or information specified in the notice or any class of documents so specified that in the opinion of the Central Government the disclosure of the documents or information or of documents or information of that class would be contrary to public interest and where such a notice is given, nothing in this Act shall be construed as authorising or requiring the Lokpal, the Lokayukta or any member of their staff to communicate to any person any document or information specified in the notice or any document or information of a class so specified.

Intentional insult or interruption to, or bringing into dispute, Lokpal or Lokayukta.

15. (1) Whoever intentionally offers any insult, or causes any interruption to the Lokpal or a Lokayukta, while the Lokpal or the Lokayukta is conducting any investigation under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.
- (2) Whoever, by words spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Lokpal or a Lokayukta into dispute, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

case so deserves, he may make a special report upon the case to the President and also inform the complainant concerned.

(6) The Lokpal and the Lokayuktas shall present annually a consolidated report on the performance of their functions under this Act to the President.

(7) On receipt of a special report under sub-section (5), or the annual report under sub-section (6), the President shall cause a copy thereof together with an explanatory memorandum to be laid before each House of Parliament.

(8) Subject to the provisions of sub-section (2) of section 10, the Lokpal may at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him or by a Lokayukta, which may appear to him to be of general public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

Staff of Lokpal and Lokayuktas

13. (1) The Lokpal may appoint, or authorise a Lokayukta or any officer subordinate to the Lokpal or a Lokayukta to appoint, officers and other employees to assist the Lokpal and the Lokayuktas in the discharge of their functions under this Act.

(2) The categories of officers and employees who may be appointed under sub-section (1), their salaries, allowances and other conditions of service and the administrative powers of the Lokpal and Lokayuktas shall be such as may be prescribed after consultation with the Lokpal.

(3) Without prejudice to the provisions of sub-section (1), the Lokpal or a Lokayukta may, for the purpose of conducting investigations under this Act, utilize the services of, —

- (i) any officer or investigation agency of the Central Government with the concurrence of that Government; or
- (ii) any other person or agency.

Secrecy of information.

14. (1) Any information, obtained by the Lokpal or the Lokayuktas or members of their staff in the course of, or for the purposes of any investigation under this Act, and any evidence recorded or collected in connection with such information, shall, subject to the provisions of the proviso

(3) The provisions of section 198B of the Code of Criminal Procedure, 1898, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (1) of the said section 198B, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction, —

- (a) in the case of an offence against the Lokpal, of the Lokpal;
- (b) in the case of an offence against a Lokayukta, of the Lokayukta concerned.

Protection.

16. (1) No suit, prosecution or other legal proceeding shall lie against the Lokpal or the Lokayuktas or against any officer, employee, agency or person referred to in section 13 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokpal or the Lokayuktas shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokpal or the Lokayuktas shall be liable to be challenged, reviewed, quashed or called in question in any court.

Conferment of additional functions on Lokpal and Lokayuktas, etc.

17. (1) The President may, by notification published in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta, as the case may be, such additional functions in relation to the redress of grievances and eradication of corruption as may be specified in the notification.

(2) The President may, by order in writing and after consultation with the Lokpal, confer on the Lokpal or a Lokayukta such powers of a supervisory nature over agencies, authorities or officers set up, constituted or appointed by the Central Government for the redress of grievances and eradication of corruption.

(3) The President may, by order in writing and subject to such conditions and limitations as may be specified in the order, require the Lokpal to investigate any action (being action in respect of which a complaint may be made under this Act to the Lokpal or a Lokayukta), and notwithstanding

ing anything contained in this Act the Lokpal shall comply with such power.

Provided that the Lokpal may entrust investigation of any such action (being action in respect of which a complaint may be made under this Act to a Lokayukta) to a Lokayukta.

(4) When any additional functions are conferred on the Lokpal or a Lokayukta under sub-section (1), or when the Lokpal or a Lokayukta is to investigate any action under sub-section (3), the Lokpal or Lokayukta shall exercise the same powers and discharge the same functions as he would in the case of any investigation made on a complaint involving a grievance or an allegation, as the case may be, and the provisions of this Act shall apply accordingly.

Power to exclude complaints against certain classes of public servants.

18. (1) The General Government may on the recommendation of the Lokpal and on being satisfied that it is necessary or expedient in the public interest so to do, exclude, by notification in the Official Gazette, complaints, involving grievances or allegations or both against persons belonging to any class of public servants specified in the notification, from the jurisdiction of the Lokpal or, as the case may be, Lokayukta:

Provided that no such notification shall be issued in respect of public servants holding posts carrying a minimum monthly salary (exclusive of allowances) of one thousand rupees or more.

(2) Every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done by virtue of that notification.

Power to delegate.

19. The Lokpal or a Lokayukta may, by a general or special

(a) any Judge as defined in section 19 of the Indian Penal Code;

(b) any officer or servant of any court in India;

(c) the Comptroller and Auditor-General of India;

(d) the Chairman or a member of the Union Public Service Commission;

(e) the Chief Election Commissioner, the Election Commissioners and the Regional Commissioners referred to in article 324 of the Constitution;

(f) any member of the secretarial staff of either House of Parliament, or the Legislative Assembly of a Union territory or the Metropolitan Council of Delhi.

22. The provisions of this Act, shall be in addition to the provisions of any other enactment or any rule of law under which any remedy by way of appeal, revision, review or in any other manner is available to a person making a complaint under this Act in respect of any action, and nothing in this Act shall limit or affect the right of such person to avail of such remedy.

The First Schedule [See section 3(2)]

I, _____ Lokpal
having been appointed _____ do
a Lokayukta
swear in the name of God
that I will bear true faith and allegiance
solemnly affirm
to the Constitution of India as by law established and I will
duly and faithfully and to the best of my ability, knowledge
and judgment perform the duties of my office without fear or
favour, affection or illwill.

The Second Schedule [See section 5(4)]

There shall be paid to the Lokpal and the Lokayuktas in respect of time spent on actual service, salary at the following rates per mensem, that is to say —

Lokpal 5,000 rupees

Lokayukta 4,000 rupees

Provided that if the Lokpal or a Lokayukta at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its pre-

decessor Governments, his salary in respect of service as the Lokpal or, as the case may be, a Lokayukta shall be reduced —

Power to make rules

20. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for —

(a) the authorities for the purpose required to be prescribed under sub-clause (ii) of clause (c) of section 2;

(b) the allowances and pension payable to and other conditions of service of, the Lokpal and Lokayuktas;

(c) the form in which, complaints may be made and the fees, if any, which may be charged in respect thereof;

(d) the powers of a civil court which may be exercised by the Lokpal or a Lokayukta;

(e) any other matter which is to be or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is in the opinion of the President necessary for the proper implementation of this Act.

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

21. For the removal of doubts it is hereby declared that nothing in this Act shall be construed to authorise the Lokpal or a Lokayukta to investigate any action which is taken by or with the approval of —

decessor Governments, his salary in respect of service as the Lokpal or, as the case may be, a Lokayukta shall be reduced —

(a) by the amount of that pension; and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension; and

(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity.

The Third Schedule [See section 8(1)(a)]

(a) Action taken in a matter certified by a Secretary as affecting the relations or dealings between the Government of India and any foreign Government or any international organisation of States or Governments.

(b) Action taken under the Extradition Act, 1962, or the Foreigners' Act, 1946.

(c) Action taken for the purpose of investigating crime or protecting the security of the State including action taken with respect to passports and travel documents.

(d) Action taken in the exercise of powers in relation to determining whether a matter shall go to a court or not.

(e) Action taken in matters which arise out of the terms of a contract governing purely commercial relations of the administration with customers or suppliers, except where the complainant alleges harassment or gross delay in meeting contractual obligations.

(f) Action taken in respect of appointments, removals, pay, discipline, superannuation or other matters relating to conditions of service of public servants but not including action relating to claims for pension, gratuity, provident fund or to any claims which arise on retirement, removal or termination of service.

(g) Grant of honours and awards.

ANNEXURE V

THE LOKPAL BILL, 1977

A

BILL

to provide for the appointment of a Lokpal to inquire into allegations of misconduct against public men and for matters connected therewith.

BE it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows:-

PRELIMINARY

Short title,
extent and
commencement.

1. (1) This Act may be called the Lokpal Act, 1977.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, specify.

Definitions.

2. In this Act, unless the context otherwise requires,-

(a) "competent authority", in relation to

a public man, means:-

- (1) in the case of a public man referred to in sub-section (1) or sub-section (11) of clause (g)
- (2) in the case of a public man referred to in sub-section (1) or sub-section (11) of clause (g)

(12) in the case of any other public man

(b) "complaint" means a complaint alleging misconduct against a public man;

45 of 1960.
2 of 1947.

Handwritten note:
The word "complaint" is defined in the Act as follows:-
and shall include...

† 2 †

(a) "Corruption" includes any act or omission under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1947;

(d) "Lokpal" means a person appointed under section 4 as the Lokpal, where a Special Lokpal is appointed under section 8 for exercising jurisdiction in relation to any complaint or any classes of complaints, for the purpose of such complaints or classes of complaints, such Special Lokpal;

(e) "misconduct" means misconduct of the nature specified in section 3;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "public man" means a person who is or has been -

(1) a member (including a Deputy Minister) of the Council of Ministers for the Union;

(11) a member of other House of Parliament;

(111) the Chief Minister of a State;

(12) a member (including a Deputy Minister) of the Council of Ministers of a Union territory.

20.07.1963

under section 17 of the Government of Union Territories Act, 1963;

(v) a member of the Legislative Assembly for any Union territory;

(vi) a member of the Executive Council constituted under the Delhi Ministers-Act, 1963;

(vii) the Mayor of a Municipal Corporation in any Union territory;

(h) "Public servant" shall have the same

meaning as in section 21 of the Indian Penal Code.

45 of 1860. Misconduct by a public man.

3. (1) A public man commits misconduct -

(a) if he is actuated in the discharge of his functions as such public man by motives of personal interest or other improper or corrupt motives; or

(b) if he abuses or attempts to abuse his position as such public man to cause harm or undue hardship to any other person; or

(c) if he directly or indirectly allows his position to be taken advantage of by any of his relatives or associates and by reason thereof such relative or associate secures any undue gain or favour to himself or to another person or causes harm or undue hardship to another person.

Explanation:- For the purposes

of this clause, "associated" in relation to a public man includes any

person in whom such public man is interested; or

(d) if he fails to act in any other-wise than in accordance with the norms of integrity and conduct which ought to be followed by the class

of public man to which he belongs for

(e) if any act or omission by him constitutes corruption

45 of 1860.

(2) A public man who -

(a) abets (within the meaning of section 107 of the Indian Penal Code) the

commission of, or

(b) conceals or attempts to conceal from detection the commission of,

misconduct of the nature specified in sub-section

(1) by another public man, also commits misconduct.

(3) A public man, being a person who is or has been a Minister of a State who -

(a) abets (within the meaning of section 107 of the Indian Penal Code) the commission of, or

45 of 1860.

(b) concerns or a threat to general law
detection the commission of,

misconduct of the nature specified in sub-section
(1) by any other person who is or has been a
member (including a Deputy Minister) of the Coun-
cil of Ministers of the State, also commits mis-
conduct and for this purpose references to "public
man" and "public man" in sub-section (1) shall be
construed as also including a reference to such
other person.

Appointment
of Lokpal

Lokpal to
be eligi-
ble to hold
other
offices.

MACHINERY FOR INVESTIGATIONS

4. (1) For the purpose of making inquiry
in respect of complaints under this Act, the
President shall, after consultation with the Chief
Justice of India, the Chairman of the Council of
States and the Speaker of the House of the People,
appoint, by warrant under his hand and seal, a
person to be known as the Lokpal.

(2) Every person appointed as the Lokpal
shall, before entering upon his office, make and
subscribe before the President, or some person
appointed in that behalf by the President, an oath
or affirmation in the form set out in the Schedule.

5. (1) The Lokpal shall not be a Member of
Parliament or a Member of the Legislature of any
State and shall not hold any office of trust or
profit (other than his office as Lokpal), or be
connected with any political party, or engaged in any
business, or practise any profession, and accordingly
before he enters upon his office, a person
appointed as the Lokpal shall, -

- (a) if he is a Member of Parliament or
of the Legislature of any State, he
resign such membership, or
- (b) if he holds any office of trust
or profit, resign from such
office; or

...../3.

i.

- on which he enters upon his office :

(a) the Lokpal may, by writing under

- section 7.

or the Government of a State.

at the rate of five thousand rupees per month;

(other than a disability or young person) and

•3/•••••

respect of any military service under the Government

be reduced -

- equivalent of that for a

payment of rent to the use of an official residence.

Justice of the Supreme Court of India:

after his appointment there.

.....

-: 9 :-

Removal of
Lokpal

7. (1) The Lokpal shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) The procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Lokpal under sub-section (1) shall be as provided in the Judges (Inquiry) Act, 1968, in relation to the removal of a Judge and, accordingly, the provisions of that Act shall, subject to necessary modifications, apply in relation to the removal of the Lokpal as they apply in relation to the removal of a Judge.

8. (1) Notwithstanding anything contained in section 7, if the President is satisfied on a report from the Lokpal that it is necessary so to do for the expeditious disposal of complaints under this Act, he may, after consultation with the Chief Justice of India, the Chairman of the Council of States and the Speaker of the House of the People, appoint, by warrant under his hand and seal, one or more persons to be a Special Lokpal or Lokpals.

...../10.

-: 10 :-

for exercising jurisdiction in relation to such complaints or such classes of complaints under this Act as may be specified in the ~~Act~~ ^{Act}.

(2) A Special Lokpal shall hold office for a term of five years or for such shorter period as may be specified in the warrant of his appointment and a Special Lokpal appointed for a term of less than five years shall be eligible for reappointment.

Provided that the total period for which a person may hold the office of Special Lokpal shall in no case exceed five years.

(3) Save as otherwise expressly provided in this Act, the provisions of this Act relating to the Lokpal, including the provisions relating to the oath to be taken by the Lokpal, the immunities of the Lokpal to hold other offices, the conditions of service of Lokpal and removal of Lokpal, the functions, powers and duties of the Lokpal, shall apply in relation to a Special Lokpal as they apply in relation to the Lokpal but nothing in this sub-section shall be construed to enable a Special Lokpal to exercise jurisdiction in relation to any complaint or class of complaints not specified in the notification by which he was appointed.

9. (1) The Lokpal shall have a Secretary and such other officers and employees as may be prescribed to assist him in the discharge of his functions (including verification and investigation in respect of complaints) under this Act.

Signature

Staff of
Lokpal.

- 11 -

(2) Without prejudice to the provisions of sub-section (1), the Lokpal may, for the purpose of dealing with any complaints or any classes of complaints, secure -

- (1) the services of any officer or employee or investigating agency of the Central Government or a State Government with the concurrence of that Government; or
- (11) the services of any other person or agency.

(3) The terms and conditions of service of the officers and employees referred to in sub-section (1) and of the officers, employees, agencies and persons referred to in sub-section (2) (including such special conditions as may be considered necessary for enabling them to act without fear in the discharge of their functions) shall be such as may be prescribed in consultation with the Lokpal.

(4) The officers and employees referred to in sub-section (1) and the officers, agencies and persons referred to in sub-section (2) shall also assist the Special Lokpal (if any) in the discharge of their functions.

Jurisdiction
of Lokpal.

60 of 1952.

Matters not
subject to
jurisdiction
of Lokpal.

-12-

JURISDICTION AND PROCEDURE IN RESPECT OF COMPLAINTS.

10. (1) Subject to the other provisions of this Act, the Lokpal may inquire into any matter involved in, or arising from, or connected with, any allegation of misconduct against a public man made in a complaint under this Act.

(2) No matter in respect of which a complaint may be made under this Act shall be referred for inquiry under the Commissions of Inquiry Act, 1952, except with the concurrence of the Lokpal.

11. (1) The Lokpal shall not inquire into any matter concerning any person if he has any line in respect of such matter or person and if any dispute arises in this behalf, the President shall, on an application made by the party aggrieved, obtain in such manner as may be prescribed the opinion of the Chief Justice of India as to whether the dispute in conformity with such opinion.

(2) The Lokpal shall not inquire into any act, or conduct, of any person other than a public man except in so far as he considers it necessary so to do for the purposes of his inquiry into any allegation of misconduct against a public man.

60 of 1957.

(3) The Lokpal shall not proceed into any matter which has been referred for inquiry under the Commission of Inquiry Act, 1952, or its recommendation or with his prior concurrence.

(4) The Lokpal shall not inquire into any allegations of misconduct against a public man if the complaint in respect thereof is made after the expiry of five years from the date on which the misconduct is alleged to have been committed:

Provided that the Lokpal may entertain such a complaint, if the complainant satisfies him that he had sufficient cause for not making the complaint within the said period of five years.

Complaints.

12. (1) Any person other than a public servant may make a complaint under this Act to the Lokpal.

(2) The complaint shall be in the prescribed form and shall set forth particulars of the misconduct alleged and shall be accompanied by an affidavit in support of the allegation of misconduct and the particulars thereof and a certificate in the prescribed form in respect of the deposit under sub-section (2).

(3) The complainant shall lodge it in such manner and with such authority or agency as may be prescribed and a surety or bond may be required to be furnished by the complainant to be available for the purpose of ensuring compliance with the provisions of this sub-section.

(4) Notwithstanding anything contained in the foregoing sub-sections, any complaint made to the Lokpal by a person in police custody, or in a jail, or in any asylum or other institution for insane persons may, if the Lokpal is satisfied that it is necessary so to do, be treated as a complaint made in accordance with the provisions of this section.

(5) Notwithstanding anything contained in any other enactment, it shall be the duty of a police officer or other person in charge of any jail or place of custody or of any asylum or other place for insane persons to forward, without opening, any letter addressed to the Lokpal by a person imprisoned or detained in such jail, place of custody, asylum or other place, to the Lokpal without delay.

Preliminary scrutiny of complaints by Lokpal.

13. (1) If the Lokpal is satisfied, after considering a complaint and after making such verification as he deems appropriate, -

(a) that the complaint is not made within the period of five years specified in sub-section (4) of section 11 and that there is no sufficient cause for entertaining the complaint; or

- (b) that he cannot make an inquiry in respect of the complaint by reason of the provisions of sub-sections (1), (2) or (3) of section 11; or
- (c) that the complaint is frivolous or vexatious or is not made in good faith; or
- (d) that there are no sufficient grounds for inquiring into the complaint,
- the Lokpal shall dismiss the complaint after recording his reasons therefor and communicate the same to / complainant and to the competent authority concerned.

Procedure in respect of inquiries.

- (2) The procedure for verification in respect of a complaint under sub-section (1) shall be such as the Lokpal deems appropriate in the circumstances of the case and in particular the Lokpal may, if he deems it necessary so to do, call for the comments of the public man concerned.
14. (1) If, after the consideration and verification under section 13 in respect of a complaint, the Lokpal proposes to conduct any inquiry, he -
- (a) shall forthwith forward a copy of the complaint to the competent authority concerned;
- (b) may make such orders as to the safe custody of documents relevant to the inquiry as he deems fit;

Evidence.

- (c) shall, at such time as he considers appropriate, forward a copy of the complaint to the public man and afford him an opportunity to present his case.
- (2) Every such inquiry shall, unless the Lokpal, for reasons to be recorded in writing determines otherwise, be conducted in camera.
- (3) Save as aforesaid, the procedure for conducting any such inquiry shall be such as the Lokpal considers appropriate in the circumstances of the case.

15. (1) Subject to the provisions of this section, for the purpose of any inquiry (including the verification under section 13), the Lokpal -

- (a) may require any public servant or any other person, who, in his opinion is able to furnish information or produce documents relevant to such inquiry, to furnish any such information or produce any such document;
- (b) shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-
- (1) summoning and enforcing the attendance of any person and examining him on oath;
- (ii) requiring the discovery and production of any document;
- (iii) receiving evidence on affidavits;
- (iv) requisitioning any public record or copy thereof from any court or office;

- (7) A proceeding before a Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to Government or any public servant, whether imposed by any enactment or by any provision of law.

ston of law whatever, shall apply to the disclosure of information for the purposes of any inquiry (including the verification under section 13) under this Act; and

(b) the Government or any public servant shall not be entitled, in relation to any such verification or inquiry, to any such privilege in respect of the production of documents or the giving of evidence, as is allowed

19 of 1966.

by any enactment or by any provision of the Charter or in legal proceedings.

(4) No person shall be required or authorised by virtue of this Act to furnish any such information or answer any such question or produce so much of any document -

(a) as might prejudice the security, or defence, or international relations, of India (including India's relations with the Government of any other country or with any international organization), or the investigation or detection of crime; or

(b) as might involve the disclosure of
proceedings of the Cabinet of the
Union Government or ~~any~~ ^{any} ~~from~~ ^{from} ~~the~~ ^{the} ~~Government~~ ^{Government}
of that Cabinet or of the Cabinet
of the Government of any State
or Union Territory or of the
Executive Council ~~constituted~~
under the Delhi Administration
Act, 1966, or of any Committee
such ^{as} Cabinet or Executive Council,
and for the purpose of this sub-section, a
certificate issued by a Secretary to the

Government certifying that any information, answer, or portion of a document, is of the nature specified in clause (a) or clause (b) shall be binding and conclusive:

Provided that the Lokpal may require any information or answer or portion of a document in respect of which a certificate is issued under this sub-section to the effect that it is of the nature specified in clause (a) to be disclosed to him in private for scrutiny and if on such scrutiny the Lokpal is satisfied that such certificate ought not to have been issued, he shall declare the certificate to be of no effect.

Search and seizure.

16. (1) If the Lokpal has reason to believe that any documents which, in his opinion, will be useful for, or relevant to, any inquiry under this Act, are secreted in any place, he may authorise any officer subordinate to him, or any officer of an investigating agency referred to in sub-section (2) of section 9, to search for and to seize such documents.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) would be

evidence for the purpose of an inquiry under this Act and that it would be necessary to retain the document in his custody, he may so retain the said document till the completion of such inquiry:

Provided that where such document is seized before the commencement of such inquiry, the Lokpal shall return the document before the expiration of a period of one year from the date on which it is seized unless such inquiry has been commenced before such expiration.

Explanation.— For the purposes of this sub-section, an inquiry in respect of a complaint -

- (a) shall be deemed to have commenced on the date on which the Lokpal forwards a copy of the complaint to the competent authority concerned under clause (a) of sub-section (1) of section 14;
- (b) shall be deemed to have been completed on the date on which the Lokpal closes the case under sub-section (3) of section 17.

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "magistrate", wherever it occurs, the words

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Frank, Bernard

"The Ombudsman Revisited", International Bar Journal, 1975.

Friedman, K.A

"Institutionalizing Bureaucratic Critics in Atlantic Canada: The Ombudsman in Nova Scotia and Newfoundland", A Paper presented at the Annual Meeting of Political Studies Association, Halifax, October 21, 1977.

Holmgren, Kurt

"The Need For An Ombudsman Too" in Rowat (ed.) The Ombudsman: Citizen's Defender (London: George Allen and Onwins, 1965).

Gwyon, William G.

"Transferring the Ombudsman" in S.V. Anderson (ed.) Ombudsman For American Government (Englewood Cliffs, N.J.: Prentice Hall, 1968).

Jain, R.B.

"The Ombudsman": A Super-Administrator or a Grievance-Man", Indian Journal of Public Administration, Vol. 21, 1975

Kagzi, M.D.J.

"Control of the Administration", Public Law, 1968

Kogekar, S.V.

"Problems of Public Administration in Underdeveloped Areas with Special Reference to India" in B.B. Majumdar (ed.) Problems of Public Administration (Patney, 1953).

Lundvik, Ulf

"Comment on the Ombudsman for Civil Affairs", in D.C. Rowat (ed.) The Ombudsman, (George Allen and Union, 1965).

Motiwar, O.P.

Problems Relating to the Administration of Justice, IJPA Vol. XX No. 1, 1974. 157-186.

Mukharji, P.B.

Grievance-Man in the Indian Administrative System - Ombudsman, Lokayukta and Lokpal, Indian Journal of Public Administration, Vol. XVII No. 3, July - Sept. 1971). 408-24.

Narsimhan, R.L.

"The Indian Ombudsman Proposal: A Critique" Law and The Commonwealth (Occasional Papers), Fourth Commonwealth Law Conference (New Delhi, 1971).

23 : -
MISCELLANEOUS

Expenditure on Lokpal and Special Lokpals to be a charge on the Consolidated Fund of India.

Secrecy of information.

19. The salaries, allowances and pensions payable to, or in respect of, the Lokpal and the Special Lokpals shall be expenditure charged on the Consolidated Fund of India.

20. (1) Any information obtained by the Lokpal, or by any officer, employee, agency or person referred to in section 9, in the course of, or for the purpose of, any verification or inquiry under this Act, and any evidence recorded or collected in connection therewith shall be treated as confidential and, notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall be entitled to compel a Lokpal, or any such officer, employee, agency or person, to give evidence relating to such information or to produce the evidence so recorded or collected.

(2) Nothing in sub-section (1) shall apply to the disclosure of the information or evidence referred to therein -

(a) for the purpose of this Act or for the purposes of any action or proceedings to be taken on any report under section 17; or

(b) for the purposes of any proceedings for an offence of giving or fabricating false evidence, under the Indian Penal Code; or

45 of 1860.

Intentional insult or interruption to, or bringing into disrepute, a Lokpal.

(c) For such other purposes as may be prescribed.

21. (1) Whoever intentionally offends any insult, or causes any interruption, to the Lokpal while the Lokpal is making any verification/conducting any inquiry under this Act, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever, by words spoken or intended to be read, makes or publishes any statement, or does any other act, which is calculated to bring the Lokpal into disrepute, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(3) The provisions of sub-section (2) of section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (2) of the said section 199, subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor except with the previous sanction of the Lokpal.

Power of Lokpal to try certain offences summarily.

22. (1) If, at any stage of a proceeding before a Lokpal, it appears to the Lokpal that any person appearing in such proceeding had knowingly or fully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceedings, the Lokpal may, if it is necessary and expedient in the

Interests of justice that the person should be tried summarily for rioting or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily, so far as may be, in accordance with the procedure prescribed for summary trials under the Code of Criminal Procedure, 1973, and sentence him to imprisonment for a term which may extend to five hundred rupees, or to both.

(2) When any such offence as is described in section 175, section 178, or section 180 of the Indian Penal Code is committed in the view or presence of the Lokpal, the Lokpal may cause the offender to be detained in custody and may, at any time on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to simple imprisonment for a term which may extend to one month, or to fine which may extend to five hundred rupees, or to both.

(3) In every case tried under this section, the Lokpal shall record the facts constituting the offence with the statement (if any) made by the offender as well as the finding and the sentence.

...../ 26.

2 of 1974.

2 of 1974.

2 of 1974.

Conferment of additional functions on Lokpals.

(4) Any person convicted on a trial under this section may appeal to the High Court and the provisions of Chapter XXIV of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to appeals under this section and the High Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(5) The provisions of this section shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973.

(6) Words and expressions used in this section and not defined in this Act shall have the same meaning as in the Code of Criminal Procedure, 1973.

83. (1) The President may, by notification in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal such additional functions in relation to the eradication of corruption as may be specified in the notification.

(2) The President may, by order in writing and subject to such conditions or restrictions as may be specified in the order, require the Lokpal to inquire into any allegations of misconduct specified in the order in respect of a public servant, notwithstanding anything contained in this Act; the Lokpal shall comply with such order.

(3) Where any additional functions are conferred on the Lokpal under sub-section (1), or when the Lokpal is to give any inquiry under sub-section (2), the Lokpal shall exercise the same powers and discharge the same functions as he would in the case of any inquiry made on a complaint under this Act and the provisions of this Act shall apply

of deposits.

24. The sum deposited by a complainant under section 12 shall,

(a) in a case where the complaint is dismissed under clause (a) of section 13, stand forfeited to the Central Government;

(b) if the Lokpal for reasons to be recorded in writing so directs, be utilized for compensating the public men complained against; and

(c) in any other case, be refunded to the complainant.

Protection:

25. (1) No suit, prosecution, or other legal proceedings shall lie against the Lokpal, or against any officer, employee, agency or person referred to in section 9, in respect of anything which is in good faith done, or intended to be done, under this Act.

(2) No proceedings of a Lokpal shall be held bad for want of form and no proceedings or decision of a Lokpal shall be liable to be challenged, reviewed, quashed, or called in question, in any court.

26. The Lokpal may, by general order or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any powers conferred or duties imposed on him by or under this Act (except the powers under the proviso to sub-section (2) of section 11 and the proviso to sub-section (3) of section 12, the power to dismiss a complainant under sub-section (1) of section 13 and the power to make

.....28/-

Power to make rules.

27. (1) The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for:-

(a) the authorities required to be, prescribed under sub-clause (ii) of clause (a) of section 2;

(b) the officers and employees who may be appointed under sub-section (1) of section 9;

(c) the terms and conditions of service of the officers, employees, agencies and persons referred to in sub-section (3) of section 9;

(d) the form in which complaints may be made under section 12 and the fees, if any, which may be charged in respect thereof;

(e) the form in which certificates shall be furnished in respect of clauses (vi) and (vii) of sub-section (2) of section 12;

(f) the matters referred to in sub-clause (vi) of clause (b) of sub-section (1) of section 16;

(g) any other matter which is to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more

successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Saving.

28. Nothing contained in this Act shall be construed as affecting the constitution of, or the continuance of functioning or exercise of powers by any commission of inquiry appointed under the Commissions of Inquiry Act, 1952 before the commencement of this Act and no complaint shall be made under this Act in respect of any matter referred for inquiry to such commission before such commencement.

THE SCHEDULE

[See section 4(2)]

I, _____, having been appointed a Lokpal, do swear in the true solemnity of my soul, that I will bear true faith and allegiance to the Constitution of India as by law established and I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will.

BIBLIOGRAPHY

BOOKS

Anderson, S.V.

Ombudsman Papers: American Experience and Proposals (Berkley: Institute of Governmental Studies, 1969)

Ombudsmen For American Government? (Englewood Cliffs, N.J.: Prentice Hall Inc., 1968).

Caiden, Gerald E.

To Right Wrong: The Ombudsman Experience in Israel (Los Angeles, California, School of Public Administration USC, Mimeo. 1977).

Eldersveld, S., Jagannadham, V., and Barnabas, A.P.

The Citizen And The Administrator in a Developing Democracy (Glenview: Scott, Foresman & Company, 1968).

Finland,

The Parliamentary Ombudsman in Finland: Position and Functions (Helsinki: Government Printing Centre, 1976).

Fitzharris, Timothy L.

The Desirability of A Correctional Ombudsman (Berkley: Institute of Governmental Studies, 1973).

Gellhorn, Walter A.

When Americans Complain (Cambridge: Harvard University Press, 1966).

Ombudsmen and Others: Citizens' Protectors in Nine Countries (Cambridge: Harvard University Press, 1966).

Hill Larry B.

The Model Ombudsman: Institutionalizing New Zealand's Democratic Experiment (Princeton: Princeton University Press, 1976).

International Bar Association (Ombudsman Committee)

Ombudsman And Other Complaints Handling Systems Survey (Allentown: Pennsylvania, July 1975 to June 1976).

(Ombudsman Committee)

Ombudsman And Other Complaint - Handling Systems Survey (Allentown: Pennsylvania, Vol. VII, July 1977 to June 1978).

Jagannadham, V., and Makkija, H.R.

Citizen Administration and Lokpal (New Delhi: S. Chand & Co. 1969).

Jain, M.P.

Lokpal: Ombudsman in India (New Delhi: Academic Books Ltd., 1970).

Janowitz, Morris; Wright, Deil; and Delany, William.
Public Administration And The Public Perspectives Toward Government
In A Metropolitan Community (Ann Arbor, Michigan: Institute of
Public Administration, University of Michigan, 1958).

Majumdar, B.B.
Problems of Public Administration (Patna, 1953).

Rowat, D.C.
The Ombudsman: Citizen's Defender (London: George Allen & Onwin
Ltd., 1965).

The Ombudsman Plan: Essay on The Worldwide Spread of an Idea
(Toronto: McClellan and Stewart, 1975).

REPORTS

Canada, House of Commons,
Standing Committee on Privileges and Elections: Minutes of the
Proceedings (No. 7 by Prof. D.C. Rowat, 1 October, 1964).

India,
Administrative Reforms Commission: Interim Report on The
Machinery For Redress of Citizens' Grievance (New Delhi: Govern-
ment of India Press, 1966).

(Second Lok Sabha),
Estimates Committee, 137th Report (New Delhi, 1964).

Fourteenth Report of the Law Commission, Vol. 1, 1963

Ministry of Home Affairs, Annual Report (New Delhi, 1966-67).

Lokpal Bill, 1977: Report of the Joint Committee (New Delhi:
Lok Sabha Secretariat 1978).

Lok Sabha Debates, 3rd Series (April 3 and 22, 1964)
Vol. XXX, cc. 12356-416

Lok Sabha Debates, 3rd Series (April 13, 1963) Vol. XVI
cc. 7556-58 and 7589-93

Lok Sabha Debates, 3rd Series (April 9 and 23, 1965) Vols. XLI,
cc. 0848-50 and XLII, cc. 10838-906.

Lok Sabha Debates, 3rd Series (November 10 and 25, 1966) Vols. LX,
cc. 2642 and LXI 5724-80.

Lok Sabha Debates 3rd Series (November 23, 1967) Vol. X,
cc. 4363-77.

Lok Sabha Debates, 4th Series, (December 2, 1967) Vol. X
cc. 4363-77.

_____, (Ministry of Home Affairs),
Report of the Commissioner for Scheduled Castes and Scheduled
Tribes (New Delhi, General Manager of Publications, 1952).

_____, (Ministry of Home Affairs),
Report of the Commissioner for Linguistic Minorities.

_____, (Department of Social Welfare),
Report of the Committee on Untouchability, Economic and Educational
Development of Scheduled Castes and Connected Documents.
(New Delhi: General Manager of Publication, 1969).

Report of the Commissioner for Scheduled Castes and Scheduled Tribes
(New Delhi: General Manager of Publications, 1956-57).

_____,
Report on the Machinery of Government of India
and Its Procedures of Work (New Delhi: 1968) Cyclostyled.

_____, (Fourth Lok Sabha)
Report of the Parliamentary Committee on the Welfare of Scheduled
Castes and Scheduled Tribes (New Delhi: General Manager of Publications
1968).

The Statistical Abstracts (New Delhi: The Central Statistical
Organization, 1975).

, (Planning Commission),
Report of the Study Team on Social Welfare and Welfare
of Backward Classes (New Delhi, 1959).

New Zealand,
New Zealand Official Year Book (Wellington: Department of
Statistics, 1977).

Official Record of Proceedings: Conference of Australian and
Pacific Ombudsmen (Wellington: Office of the Ombudsman, 1974).

Report of the Ombudsmen (Wellington: Government Printer, 1977).

Nova Scotia,
Fifth Report of the Ombudsman, Province of Nova Scotia
(Halifax, 1975).

Rajasthan,
Department for the Removal of Public Grievances, First Annual
Report (Jaipur, 1964-65).

Rajasthan Ke Lokayukta Vah Uplokayukta Ka Varsik Samakit Prativedan
(Jaipur, 1973-74).

Second Annual Report of the Lokayukta (Jaipur, 1975-76).

Third Annual Report of the Lokayukta (Jaipur, Central Government
Press, 1975-76).

First Annual Report, Department for the Removal of Public Grievances
(Jaipur, 1964-65).

Report of the Administrative Reforms Committee (Jaipur: Central
Government Press, 1963).

United Nations,
Report of the Committee on Standards and Techniques of Public
Administration, (U.N. 1951).

ARTICLES

Bexelius, Alfred.
"The Ombudsman For Civil Affairs" in D.C. Rowat (ed.) The
Ombudsman (George Allen and Unwin, 1965).

Chapman, Brian
"The Ombudsman" Public Administration (London) 1960.

Frank, Bernard

"The Ombudsman Revisited", International Bar Journal, 1975.

Friedman, K.A

"Institutionalizing Bureaucratic Critics in Atlantic Canada: The Ombudsman in Nova Scotia and Newfoundland", A Paper presented at the Annual Meeting of Political Studies Association, Halifax, October 21, 1977.

Holmgren, Kurt

"The Need For An Ombudsman Too" in Rowat (ed.) The Ombudsman: Citizen's Defender (London: George Allen and Onwins, 1965).

Gwyon, William G.

"Transferring the Ombudsman" in S.V. Anderson (ed.) Ombudsman For American Government (Englewood Cliffs, N.J.: Prentice Hall, 1968).

Jain, R.B.

"The Ombudsman": A Super-Administrator or a Grievance-Man", Indian Journal of Public Administration, Vol. 21, 1975

Kagzi, M.D.J.

"Control of the Administration", Public Law, 1968

Kogekar, S.V.

"Problems of Public Administration in Underdeveloped Areas with Special Reference to India" in B.B. Majumdar (ed.) Problems of Public Administration (Patney, 1953).

Lundvik, Ulf

"Comment on the Ombudsman for Civil Affairs", in D.C. Rowat (ed.) The Ombudsman, (George Allen and Union, 1965).

Motiwar, O.P.

Problems Relating to the Administration of Justice, IJPA Vol. XX No. 1, 1974. 157-186.

Mukharji, P.B.

Grievance-Man in the Indian Administrative System - Ombudsman, Lokayukta and Lokpal, Indian Journal of Public Administration, Vol. XVII No. 3, July - Sept. 1971). 408-24.

Narsimhan, R.L.

"The Indian Ombudsman Proposal: A Critique" Law and The Commonwealth (Occasional Papers), Fourth Commonwealth Law Conference (New Delhi, 1971).

Pendørsen, I.M.

"Danish Ombudsman" in Rowat (ed.) The Ombudsman: The Citizen's Defender (London: George Allen and Onwin Ltd., 1965).

Swamy, R.K.

"The Case For A Permanent Tribunal of Inquiry", Modern Review, 1964.

NEWSPAPER

The Overseas Hindustan Times Weekly (New Delhi) 15 July, 1978.

The Statesman (New Delhi) 29 April, 1977.

The Statesman (New Delhi) 20 July, 1978.

The Statesman (New Delhi) 6 September, 1978.

MISCELLANEOUS

International Bar Association (Ombudsman Committee),
Newsletter (Attention: Pennsylvania, 1976).

India,
Lokpal and Lokayukta Bill, 1971 (New Delhi: Lok Sabha Secretariat, 1971).

Lokpal Bill, 1977 (New Delhi: Lok Sabha Secretariat, 1977).

Norway,
Information (Oslo: Ministry of Foreign Affairs, 1976).

Sweden
The Swedish Ombudsmen (Stockholm, Sweden: The Swedish Institute, 1977).

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