There have been objections expressed both in India and outside regarding the inclusion of Ministers within the investigatory jurisdiction of the Ombudsman. It is argued that the ombudsman investigations are violative of the principle of ministerial responsibility. On the other hand, in the United States, the converse objection has been raised that all existing ombudsmen are found in parliamentary systems, consequently it is not adaptable in a presidential set up. As the Indian Constitution has incorporated the principle of ministerial responsibility, it becomes relevant to examine whether the ombudsman will come in conflict with the principle or not?

5:1: THE PRINCIPLE OF MINISTERIAL RESPONSIBILITY:

Ministerial responsibility implies two aspects: collective and individual accountability of ministers to the Parliament, collective for the policies of the

4. The Constitution of India, Articles 75(2) and (3), 184(1) and (2).
Government and the individual for the work in their respective departments. The 'Responsibility' is basically political in origin and is embodied in conventions of the British parliamentary system. Initially, ministers used to be appointed and dismissed by the King in his personal discretion. Ministers were to advise the King either individually or in small groups. As the King could do no wrong in the eye of law, ministers had to face the charge of evil counsel. Parliament had the practice of bringing the ministers individually to account for their acts. Members of the House of Commons used to level the charge and the Lords used to judge. This was known as the process of impeachment. During the eighteenth century, the process of impeachment was gradually replaced with the votes of censure against ministers. From this, developed the idea of collective responsibility as a protection for ministers against the King. The Representation of the People Act, 1932, made it clear that for the future of the executive, it was necessary that it must act as a body holding the same political views as the majority in Parliament. Support of the Parliament could no longer be taken for granted by other means. As individually ministers could not retain office against the will of Parliament, so also ministers had to stand or fall together in Parliament, if the Government was to be carried on by one group of persons rather than by a number of persons acting separately.

5. J.B. Birch, Representative and Responsible Government, 131.
6. Ibid.
8. The first impeachment took place in 1376 and the last in 1905.
Collective responsibility had been firmly established by the middle of nineteenth century. The meaning of it was explained by Lord Salisbury in 1878:

"For all that passes in cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues." 11

The essence of it is that the cabinet functions as a 'single whole' 12 to put up a united front both in the royal closet and in the representative chamber. This is necessary to maintain the 'corporate unity' 13 of the cabinet and the 'strength and unity' 14 of the party. Even if there is difference of opinion amongst members of the cabinet, still it must speak in 'one mind and voice' 15 and not to air the conflicting views. 16 The crux of it is that a veil must be kept over all that passes within the cabinet. This ban of silence 17 helps free and frank discussion within the cabinet and a united front in the Parliament. Without it, the cabinet will not be able to have the support of the Parliament. This does not mean that a member of the cabinet cannot resign if he is unable to persuade himself to subscribe to a particular policy. 13 But if he chooses to continue, the only option

13. Id., p. 32.
14. Jenning, supra note 7, p. 120.
17. Hare and Phillips, supra note 10, p. 53.
that he has is to side with the cabinet. If a minister decides to resign, he can publicly express his disagreement and make a resignation speech in Parliament if he so desires, but he cannot make disclosures of cabinet discussions.\(^{19}\)

Another important aspect of collective responsibility is that the Council of Ministers can stay in office only so long as it commands the support of a majority of members in the elected House. It is the whole Council of Ministers which is held politically responsible for the decisions and policies of each of the ministers which could be presumed to have the support of the whole ministry. Each minister is "vicariously"\(^ {20}\) responsible for such acts of others which are treated as cabinet decisions. If a non-confidence motion, even if it involves actions of a particular minister, the whole cabinet has to step down. The cabinet functions as a unit and goes out as a unit.

Collective responsibility is not an easy system to operate.\(^ {21}\) Each minister desires to project himself and would not like to own the acts of others. By and large, the principle has been observed, but there have been some deviations. In 1932, the cabinet had agreed to differ and the dissenting ministers were allowed to oppose the majority view by Parliament speech and vote.\(^ {22}\) This has been repeated more recently in 1975 when the cabinet agreed to "licence" the differing ministers to campaign publicly, outside Parliament against the government policy. The Prime Minister even decided that parliamentary

19. S. de Smith, supra note 10, pp. 177-73.
questions addressed to the ministers opposed to the governmental policy be transferred to ministers in other departments. These precedents are hard to reconcile with the principle of collective responsibility. It has also not been possible to maintain full secrecy of cabinet proceedings. Biographies of leading statesmen, press reports and diaries of ministers make them public. Experience has shown that it is not easy to operate the principle rigidly.

The second limb of ministerial responsibility is individual responsibility. Each minister is accountable to the Parliament for his personal conduct as also for the acts of his department. In doubt, ministers are subject to the law of the land but the rationale of their accountability for their personal conduct to the Parliament is that they are public men and wield authority, consequently the representatives of the people should keep a constant check on them. It is a sound practice to keep persons with authority answerable for their conduct.

It does not mean that on every accusation, the minister has to resign. If a minister is accused of serious personal misconduct, he must resign. In 1936, a Tribunal of Inquiry found that a cabinet minister, J. J. Thomas, had leaked a part of the budget to his friends, he had no alternative but to resign. Lord Jellicoe and Lord Lambton resigned for having 'some casual' relations with a

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24. Ibid, Refer Hansard (7 April, 1975), written answer 351 for 'Guidelines for the agreement to differ,' approved by cabinet in March, 1975 and reported to Parliament.
25. Jennings, supra note 19, pp. 81-89.
27. Phillips, supra note 15, p. 27.
29. There is a practice in the U.K. that every member of the cabinet including Junior Ministers on appointment receive a document which sets out the conduct required of them.
31.
call girl. The care that needs to be taken is that 'personal conduct' should not become a tool in the hands of the opposition and at the same time the authority of minister should not be allowed to cover his questionable conduct.

On the other hand, each minister is also individually responsible for the exercise of powers and the performance of duties enjoined upon his department. It is the minister who is answerable to the House for what has happened in his department. Civil Servants do not get an audience in the House, so the minister has to shoulder the responsibility. This responsibility came to be recognised because in the nineteenth century, the acts of the department were manifestly the acts of the minister in the sense that he personally knew and approved of them. So civil servants are neither praised nor blamed nor identified with decisions, policies or views.

This traditional anonymity of civil servants has become difficult to be maintained. Particularly in the second half of the twentieth century, ministers are no more in a position to supervise and approve each action of their department because of enormous increase in work. At best, now they are able to attend to only a few of the most important or politically sensitive issues. In fact, they remain mostly unaware of what goes on in their departments. In view of this position, it has become doubtful how far a minister can be held responsible. In view of this position, it has become doubtful how far a minister can be held responsible.

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31. Maurice Right, supra note 23, p. 293.
32. Idem.
34. Idem.
House in the sense that he owes a duty to explain and answer questions about the activities of his department. Whereas Professor Marshall and Goodie point out that if the convention merely envisages 'information', then the usage is rather 'eccentric'. They elaborate that a minister answering to the House at least acts as if his explanations were to a body with authority and not treating the members as curious or interested bystanders. There is no hard and fast requirement that a minister must invariably resign as and when anything goes wrong in his department but he can certainly be criticised and censured. The British Hans case of 1954 focussed the issue before the House of Commons as to whether a minister has to always bear the blame for the wrongs in his department or not? In the course of the debate, the then Home Secretary, Sir David Maxwell Fyfe categorised the situations when a minister is to protect a civil servant and to own the responsibility and when he is not to defend the action. He stated that a minister must protect the civil servant who has carried out his order or where the civil servant has acted properly in accordance with the policy laid down by the minister. Even where the official has made a mistake or caused some delay but not on an important issue of policy, the minister should acknowledge the mistake and accept the responsibility. But where the

35. S. Hiner, 'The Individual Responsibility of Ministers', Public Administration, 277-96 (1952); idem, supra note 295.
38. For details, refer ... Governance (Clarendon Press Oxford), 69-63 (1977); see and Phillips, supra note 10, p. 29.
action has been taken by the civil servant which had been disapproved by the minister or had no prior knowledge and the conduct of the official is reprehensible, then there is no obligation on the part of the minister to endorse or to defend what are clearly shown to be errors of his officials. Agreeing with this position, Herbert Morrison counsels that if an official does not carry out the instructions of a minister, it would be legitimate in such a case that disregard of an instruction should be made known even if it involves some humiliation for the officer concerned. Maurice Right explains that ministerial responsibility has come to mean that they are expected to accept responsibility only for those matters which they personally, or their civil servants on their instructions have initiated, developed or carried through, conversely, civil servants are liable to be held responsible for a wider range of issues. The consequence of this is that the veil of anonymity of civil servants is no more of absolute nature. It is also clear from the fact that the accounting officer and not the minister is held personally responsible to the public accounts committee and he can be surcharged for sums spent without proper authority, that officials are identified in rare cases where an individual public inquiry is set up and ministers complaining through newspaper articles and on the radio about the

40. Herbert Morrison, Government and Parliament, 324(1959); The same position has also been acknowledged by Peter G. Richards, Honourable Members: A Study of the British Backbencher, 141(1959).
41. Right, supra note 23, p. 294.
42. In most departments in the U.K., the Permanent Secretary is the Accounting Officer.
44. Wade, supra note 39, p. 39; Crichel Down - Report of the Inquity by Sir Andrew Clarke Q.C., and 9176(1954); Report of the Tribunal appointed to inquire into certain issues in relation to the circumstances leading up to the cessation of trading by the Vehicles and General Company Ltd. (James Tribunal), H.C. 80, H.C. 159 (HMSO, 1972).
hostility of civil servants. Even in normal times, if a riot breaks out, minister may be blamed for the conditions which caused it but it cannot be avoided disclosing that the situation would not have got out of hand if the District Commissioner had been efficient. So the wrapping of ministers is not always available to the officials any more. In short the principle of ministerial responsibility is a blending of both collective and individual responsibility.

51. OMBUDSMEN OF MINISTERS:
   (1) Scandinavian Experience:

   The Ombudsman in Finland, Denmark and Norway can criticize the actions of individual ministers but not in Sweden. However, in Sweden and in Finland ministers can be prosecuted, on the recommendation of the Parliament, by the Ombudsman. The exclusion of ministers in Sweden is of much consequence since the doctrine of Civil/ministerial responsibility is not applicable in totality. Civil Servants have never been subjected to the control of ministers nor do the ministers have any responsibility for the actions of civil servants. Ministers have been

45. Maurice Wright, supra note 23, p. 301.
46. Jennings, supra note 7, p. 123.
47. Mackintosh, supra note 37, p. 519.
49. The Ombudsman Act, 1954 (as amended by Act of June 9, 1971), Section 44(D).
50. The Sotting's Ombudsman for the Administration (Act of June 22, 1962), Section 4. It excludes cabinet decisions and not decisions of individual members of the cabinet. Also refer, Frank Stacey, Ombudsman Compared 32(1973).
51. Act of Instruction to the Parliamentary Ombudsman, Section 2.
52. Id., Section 10.
described as 'Conselors' only\textsuperscript{55} They do not take decisions but only advise the King-in-Council, on matters of policy, and the King-in-Council takes the decisions.\textsuperscript{56} However, ministers have not been completely left free even in the limited area of advise. The Riksdag (Parliament) can withdraw its confidence in any particular minister and he will cease to hold the office.\textsuperscript{57} Otherwise, on the report of the Committee on the Constitution, the Parliament may order the prosecution of a minister before a special court.\textsuperscript{58} In such cases, the Ombudman acts as the prosecutor\textsuperscript{59} and he has so acted on three occasions.\textsuperscript{60} Minutes of the cabinet decisions are kept and are reviewable by the Committee on the Constitution.\textsuperscript{60-4}

On the other hand, there are no Government departments in the ordinary sense in Sweden. The machinery of administration consists of numerous Boards under the control of Directors-General, Councils and similar agencies which operate as independent commands and are subject only to the law.\textsuperscript{61} Even breach of duty or neglect of duty is

\textsuperscript{56} Hans Blix, 'Pattern of Effective Protection: The Ombudman', in proceedings of sub-committee on Administrative Pratice and Procedure of the Committee on Judiciary, United States Senate (39th Congress, Second Session, S.Res. 190, 90 at p.94 (March 7, 1966).
\textsuperscript{57} The Instrument of Government, Chapter 121
\textsuperscript{58} id., articles 1-3, Blix, supra note 56;
\textsuperscript{59} Bexelius, supra note 55.
\textsuperscript{60-4} Stig Jagarskiold, supra note 56, p.9.
\textsuperscript{61} Walter Sellhom, supra note 22, p.197-99.
criminally punishable if it was intentional or was due to gross negligence committed in the exercise of public authority.\textsuperscript{62} So officials have not to function subject to the binding orders of Ministers. The position of the officials is almost as independent as that of the courts.\textsuperscript{63} In this background, no desire has been expressed to extend ombudsman supervision to cover ministers.\textsuperscript{64} It has also been pointed out that ministers have been kept out in order to keep the ombudsman outside political controversies.\textsuperscript{65} It is doubtful whether the ombudsman in Sweden has been isolated from political issues completely because matters of political interest like general elections are within the area of Chief Ombudsman.\textsuperscript{66} Though it is a sound principle that policy matters should not be subjected to Ombudsman screening yet there does not seem to be much of justification to exclude the conduct of ministers particularly when even Judges have been included.\textsuperscript{67} Since ministers continue in office only as long as they enjoy the confidence of the Riksdag, the Ombudsman reports about the conduct of ministers if included can be of much help and use.

Malmö is a queer example of a mixture of presidential and parliamentary form of system.\textsuperscript{69}

\begin{itemize}
\item \textsuperscript{63} Alfred Bexelius, 'The Ombudsman for Civil Affairs' in Bowar, supra note 2, 22 at p. 26.
\item \textsuperscript{64} Alfred Bexelius, supra note 55.
\item \textsuperscript{65} Ibid. S. Nyvall, The Ombudsman: Constitutional and Legal Processes for the Protection of the Citizen from Administrative Abuses (Ousa Institute of Administration), 30-31 (1970).
\item \textsuperscript{66} Ulf Lundvik, supra note 62, 1-4.
\item \textsuperscript{67} Supra note 51, section 3.
\item \textsuperscript{68} Supra note 57.
\item \textsuperscript{69} Supra note 53, Chapter IV; Government and Administration, articles 23-52.
\end{itemize}
President occupies an important position and not merely decorative for he is constitutionally authorised to supervise the administration, issue decrees and the Council of State is required to execute the decisions of the President. On the other hand, members of the Council of State are responsible to the Parliament for their administrative measures unless dissension has been placed on record and they continue in office as long as they enjoy the confidence of Parliament. Only the natural born citizens of Finland who are known for their honesty and ability can be appointed as members of the Council of State by the President. The decision of the President is required to be countersigned by the concerned minister who shall be responsible for the correctness of the decision and if the decision is contrary to constitutional law, the minister must refuse his counter signature.

Members of the Council of State are subject to the jurisdiction of both the guardians of law in Finland: the Chancellor of Justice and the Parliamentary Ombudsman.

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71. Article 28.
72. Article 34.
73. Council of State means council of ministers.
74. supra note 52, Article 41.
75. supra note 53, Article 43.
76. supra note 41, Article 36.
77. ibid.
78. supra note 34.
79. supra note 35.
80. supra note 47. The Chancellor of Justice is the President's Ombudsman, the Law Officer of the Government. For Chancellor's position, see, Toivo Kastari, 'The Chancellor of Justice and the Ombudsman' in Soviet Constitutional Law (1979) at pp. 60-65.
81. supra note 43.
Like the ministers, both the guardians receive the agenda papers to be considered in the cabinet and both have the right to be present at such meetings. The Chancellor normally attends the meetings whereas the Ombudsman does not. If a cabinet member acts contrary to the law, both can make a representation to the member concerned or to the Council of State. If the Chancellor’s representation is not heeded to, he can make a report to the President in case of the Ombudsman, to the Parliament. If the illegality is of such a nature as to involve prosecution of the minister and the President so orders, it shall be carried out by the Chancellor. If the Parliament so recommends, the Ombudsman will act as the prosecutor. Such prosecutions are carried out by the special court of impeachment.

The Ombudsman investigations in Finland on a few occasions have led to resignations of individual ministers and even to prosecutions. In 1927, the Ombudsman reported to the Parliament that the minister for Internal Affairs had proceeded contrary to law by relieving the Police Chief of the city from his post. The Speaker referred the matter to the Constitutional Law Committee which reported back that the minister had acted in violation of law and proposed that a charge be made against him in the court of Impeachment. The Parliament, despite the error, held that the Minister’s action does not justify such a charge.

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82. Ilavo Kastari, supra note 80, pp.60-61.
83. Ibid.
84. supra note 52, Article 47 and supra note 49.
85. Ibid.
86. Ibid.
87. supra note 52, Article 59.
In the second case of 1952, on the recommendation of the Ombudsman, the constitution law committee and the Parliament, certain ministers were proceeded against for giving illegal assistance to a private company in the Court of Impeachment and the charges were pressed by the Ombudsman. In view of the special set up in Finland, the Ombudsman's jurisdiction over ministers has not been a subject of adverse comment. In fact, this jurisdiction has helped in keeping the ministers within the rule of law.

The Danish and the Norwegian systems are based upon the principle of ministerial responsibility. The King occupies the symbolic position in both the systems. He performs functions through responsible ministers who are answerable to their respective Parliaments for the efficient administration of their departments. They are responsible for the activities of civil servants and also for their own personal acts. They hold office only as long as they enjoy the confidence of the Parliament. If in the conduct of his office, a minister breaks the law, he can even be impeached by a special court.

The Danish constitution committee of 1946 had to deal with the question as to whether the Ombudsman could be...

fitted into the Danish Constitutional System and whether it would interfere with the system of ministerial responsibility? The Committee was of the opinion that the Ombudsman’s supervision over the ministers would create no insurmountable difficulties as to ministerial responsibility and since majority of its members were ministers or had been ministers, its recommendations helped in ultimately establishing the institution.

The Ombudsman in Denmark has been given jurisdiction over the Ministers to inform the Folketing (Parliament) about mistakes or acts of negligence committed by them in the performance of their duties. The prediction of the Constitution Committee has come out to be true that the Ombudsman’s control over the ministers will not interfere with ministerial responsibility. I.e., Lønneberg attributed this to the fact that the Ombudsman has categorically refused to let himself be used, directly or indirectly, as a ‘tool of the politicians’ or as a ‘weapon in the hands of the opposition parties’ in the Folketing. This is easily deducible from the cases which have come up before the Ombudsman. In one of the cases which concerned the right of the Government to overdraw its account with the National Bank, the Ombudsman recognised that there had to be a limit to a government’s access to drawing on the National Bank for covering the expenditures granted by the legislation but pointed out that the determination of this limit rests not on legal but on political considerations in regard to which the

95. Lønneberg, ‘Ombudsmanden’, in Grundtvig, supra note 2, 75 at p.75.
96. The Ombudsman Act, supra note 49, sections 4, 5 and 10.
97. Judge of the City Court of Copenhagen.
98. Lønneberg, supra note 95, p.79.
Ombudsman refused to pronounce an opinion. In a later case, the Ombudsman held that he had no jurisdiction to criticize a statement made in the following by the Prime Minister on his usual ministerial responsibility.

It is evident from these cases that the Ombudsman was very particular in keeping himself away from political policy decisions. But this does not imply that the Ombudsman cannot at all look into the actions of ministers. In a particular case, the applicant had a personal conference with the Minister of Finance. Thereafter, he wrote to the Minister that relying on his promise, he intended to import some specific goods. The Minister did not inform him that no such promise had been given until the case was finally decided. The Ombudsman reported that in the circumstances, the Minister should have immediately informed the applicant if no such promise had been extended to him.

In a case of 1959, the Ombudsman found it rather unfortunate that the Minister of Agriculture had not given the applicant full information regarding the requirements stipulated for registering his name for export purposes or not.

In another case, before an election, the Prime Minister sent letters to voters on paper having the above design as that provided for him as Minister of his department for informal letters. The Ombudsman asked the Prime Minister to consider whether Ministers ought not to avoid using the above-mentioned design on letters sent to voters during an election campaign. Thus ministerial...

103. V. F. Roderer, supra note 95, p. 79.
responsibility to the Parliament becomes more meaningful for the Parliament is able to have more effective control and no danger to ministerial responsibility has hitherto been experienced because of Ombudsman's operation over the Ministers in Denmark.

As regards Norway, the province of the Ombudsman does not specifically cover cabinet decisions but the acts of individual ministers as heads of different ministries are within his jurisdiction. If a matter has been considered in the Parliament or by the Standing Committee on the parliamentary control, thereafter the Ombudsman is precluded from dealing with it. However, the Parliament itself can submit cases to the Ombudsman and he is under an obligation to give his opinion. The opinions in such cases are expressed not through the annual reports but by way of ad hoc reports which may be discussed separately in the Parliament. It has been contended that the Ombudsman has been able to contribute towards the well being of the Norwegian system.

From the Scandinavian experience, it is evident that the functioning of the Ombudsman has not, in any manner, hampered the operation of the principle of ministerial responsibility. It is true that the Scandinavian countries are not primarily governed through the parliamentary form of government, still the Nordic example is sufficient to demonstrate that the adoption of Ombudsman by Parliamentary systems will not cause any problem.
In the context of ministerial responsibility, the issue of Ombudsman has been a matter of controversy in the commonwealth countries. New Zealand was the first country in the commonwealth to consider the adoption of Ombudsman. Most of the British Constitutional conventions regulate the basic constitutional system prevalent in New Zealand. The convention of ministerial responsibility has also been imported 'without making many structural adaptations'. Ministers are not as tightly accountable for their subordinate's actions as the British tradition recommends. In 1960-61, when the matter came up before the cabinet, different views were voiced in regard to the suitability of the Ombudsman to have the power to review the decisions of ministers. It was argued that if he is given the power, it would undermine the accountability of ministers to the parliament whereas if the actions of the ministers were exempted, then a scheming or timid administrator will be in a position to immunize himself against investigation simply by obtaining his minister's approval of every debatable action. It was decided to have a compromise.


110. Id., pp.301-2. The author has pointed out that if a situation similar to Britain's Crichel Down case were to arise in New Zealand, it is probable that the relevant minister will not resign.
whereby the decisions of ministers were put beyond Ombudsmann's reach but the ombudsmann was empowered to inquire into the departmental recommendations on the basis of which the minister has taken the action. This formula was intended to prevent the officers from using ministers as a screen and at the same time to keep ministerial responsibility to the House unimpaired.

During the debate on the Bill in the House, the Attorney-General explained:

"If the minister follows that recommendation, then criticism of the recommendation will in effect be criticism of the decision. If he does not follow the recommendation then, that fact doubtless be stated by the Commissioner. In either event the minister in the light of the Commissioner's findings will eventually be called upon to justify his action in Parliament and that is where the minister should be called upon to account for his administrative acts."

It was added by the Attorney-General that there is no intention that ministers should remain in an ivory tower with reference to the Ombudsmann. Ultimately, the New Zealand Act provided that the principal function of the Ombudsmann will include any recommendation made to

111. Walter Gallhorn, supra note 2, pp.105-6.
112. Ibid.
a minister of the crown. It is clear that the provision stops short of giving the ombudsman authority to inquire into decisions of ministers themselves but any recommendation, even if a minister has already acted upon it, may be inquired into by the ombudsman. This scheme has worked out well. The first ombudsman of New Zealand has observed that cases have arisen where investigation has disclosed grounds for criticizing a recommendation upon which a minister has acted and the minister has been informed accordingly. The converse case has also occurred, where a minister has deliberately and after consideration decided not to accept or act upon departmental recommendation. The new Zealand experience of the Ombudsman has been that neither of these types of cases has caused any unsurmountable difficulty in the operation of the doctrine of ministerial responsibility nor has ministerial responsibility stood in the way of the effective operation of the Ombudsman. This has enabled a minister to know about matters which could otherwise lead to maladministration. The fact is that in New Zealand, the threat to the constitutional position of ministers had not been publicly voiced, it was merely a figment of the Cabinet Committee on ombudsman legislation. Prof. Larry B Hill has recorded his analysis in the study which he conducted to find out the Ombudsman's

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115. The Parliamentary Commissioner (Ombudsman) Act, 1962, Section 111(G).
119. Ibid.
120. Supra note 114, p.361.
121. Larry B. Hill, supra note 109, p.303.
impact upon the traditional concept of ministerial responsibility.\textsuperscript{122} It was found that ministers were fully satisfied, there was no interference with their responsibility, so much so that the ministers were amused that such a question should even be asked.\textsuperscript{123} But only twenty-five per cent agreed and many of the remainder intensely disagreed to the proposition that the jurisdiction of ombudsman be extended even to the decisions of ministers and not limiting to the recommendations made to them. To them, it seemed to be a preposterous proposal which would lead to dictatorship.\textsuperscript{124} The author of the study explains this reaction by indicating that there are apparent limits to their tolerance of the ombudsman.\textsuperscript{125} It had been suggested by Prof. J.R. Northey that once the novelty of the institution has worn off, its jurisdiction should be extended to include ministerial decisions as well.\textsuperscript{126} Even after the recent legislation of 1975, the position in New Zealand in this regard continues to be the same, viz., that ombudsman can examine the recommendations made to a minister and not his decisions.\textsuperscript{127} Besides this, the prime minister can refer to an ombudsman any matter, other than a matter concerning a judicial proceeding for his investigation.\textsuperscript{128} Thus there is no bar that a matter concerning a minister cannot be referred to the ombudsman.\textsuperscript{129}

\textsuperscript{122} The Model Ombudsman: Institutionalising New Zealand's Democratic Experiment, supra note 109.
\textsuperscript{123} Larry B. Hill, supra note 109, pp.303-4.
\textsuperscript{124} Id., p.306.
\textsuperscript{125} Id.
\textsuperscript{126} J.R. Northey, "New Zealand's Parliamentary Commissioner" in Bowat, supra note 2, 127 at p.137.
\textsuperscript{127} The Ombudsman Act, 1975(\textsuperscript{\texttrademark}), Section 13(?).
\textsuperscript{128} Id., Section 13(5).
\textsuperscript{129} Sir Roy Bowles, regards this provision as 'dangerous'. Refer, Report of the Proceedings at International Ombudsman Conference, Sept.6 to 10, 1976, Edmonton, Alberta, Canada, p.13.
Consequently, on a reference from the Prime Minister, the Ombudsman will be within his jurisdiction to investigate and report in regard to the actions of a minister or his conduct. Since ultimately the report is to be presented to the Parliament, ministers will continue to be accountable to it. Despite certain special references having been made, in the past, there is no evidence to date of cases involving actions of the ministers. The link between the Ombudsman and the ministers is otherwise maintained for it is necessary that before a recommendation is made to a minister, he must be consulted. It is also obligatory that if a minister so requests, he should be consulted and the Ombudsman can in his discretion consult a minister at any time during or after the investigation. The limitation that the Ombudsman can only look into 'recommendations' and not 'decisions' of ministers is not of much practical consequence. If a recommendation has been accepted by a minister, any criticism of it is 'inferentially' a criticism of the minister. It has been observed by Justice in its recent report, 'Our Fettered Ombudsman', that the adoption of Ombudsman in New Zealand is of 'considerable importance' since it has 'disposed of' an important constitutional objection that it would undermine the doctrine of ministerial responsibility.

129. Ibid.
130. Larry 3, supra note 109, p. 326.
131. The Ombudsman Act, 1975 (NZ.), Section 13(4).
132. J.R. Forthey, supra note 126.
In Australia the position is similar to that in New Zealand. The issue was examined at length in the Interim Report of the Committee on Administrative Discretions and it was of the view that if minister's acts are not to be examinable, equally the recommendations of officials to ministers ought not to be subject to scrutiny. Ultimately when the Federal Act was enacted in 1976, it provided that the Ombudsman is not authorized to investigate the action taken by a minister whereas an action taken by a delegate of a minister can be investigated. The Federal Solicitor-General has expressed the view that the Ombudsman cannot investigate advice given to a minister whereas the ombudsman has taken a different stand on 'official note' outlining the arrangements for the Ombudsman's operation provides that the ombudsman has authority to review recommendations relating to matters of administration. Some is the interpretation given by Mark Burchett, Acting Secretary, Department of the Prime Minister and the Cabinet, to the Minister which were kind enough to make it available to me on 16-10-1973.

135. Ibid., p.18, para 34.
137. Ibid. Sec.5(2)(a).
138. Ibid. Sec.5(3).
140. Ibid.
141. Official Notice No.1977/35, 19 August 1977 prepared by the Department of the Prime Minister and the Cabinet, under signatures of E. B. Cowen, Acting Official Secretary, addressed to Heads of Branches, p.4, para 19(1), a copy of the notice was available in the library of Australia House, London which they were kind enough to make it available to me on 16-10-1973.
143. The Parliamentary Commissioner Act, 1971, Sec.14(3).
144. Supra note 134, p.10, para 43.
145. The Parliamentary Commissioner Act, 1974, Sections 13(2) and 13(6).
not authorise the Ombudsman to investigate any decision made by cabinet or by a minister or question the merits of a decision. Ombudsmen have also taken care not to enter the prohibited area as is clear from their reports. \footnote{146} Any advice or recommendation to a minister has not been viewed as beyond the Ombudsman's jurisdiction. \footnote{147}

In the United Kingdom also, the introduction of the ombudsman was not free from objections. In 1957, F.T. Lawson had viewed the ombudsman as an eye of the complaints, the general public, the Parliament, the cabinet, the ministers and the senior civil servants. \footnote{148}

Four years later, doubts were expressed in a report by Justice that the ombudsman will qualify the fundamental principle of ministerial responsibility and to avoid this, it was suggested that (i) a minister should have the power to veto any proposed investigation against his department by the ombudsman and (ii) during an initial and testing period, complaints should be considered by the ombudsman only on a reference from a Member of either House of Parliament. \footnote{149} Mr. Ingersoll found it difficult to understand why Ministers should be given the right to veto an investigation and how could an ombudsman investigation happen ministerial responsibility? He pointed out that the present system in many cases makes it unnecessarily difficult to enforce ministerial responsibility because allegations are required to be proved when many facts

\footnote{146, \emph{Early Council's Commission for Administrative Investigations (Queensland), Second Report, 1st July, 1975 to 30th June, 1976, pp 43-44}, Nos. 566/75, 6 249/75, 8 151/74.}
\footnote{147, supra note 134, p.10, para 43.}
\footnote{148, F.T. Lawson, 'in Inspector-General of Administration,' \emph{Public Law}, 92 at p.94(1957).}
\footnote{149, Sir John Hayatt, supra note 3, pp 74-75.
are known only to the Ministers and officials. Similarly, in a Memorandum issued by the British Section of the International Commission of Jurists on the Justice Report, it was stressed that the Ombudsman would rather help to make ministerial responsibility more effective by penetrating the screen which Ministers interpose between members of parliament and government departments. The Ombudsman will keep the Parliament informed about administrative practices which were open to criticism and Ministers would then be called to account in Parliament in the usual way. Prof. Geoffrey Marshall made an effort to clear the doubts by explaining that the Ombudsman's office would give the members an 'additional (and possibly more potent) formula' for use at question time or when an adjournment debate fails to yield results. Despite of the general support to the institution of Ombudsman, the Macmillan government in 1962 turned it down under the slogan: 'no derogation from ministerial responsibility to Parliament.' The 1965 White Paper explained the Parliamentary Commissioner scheme for Ireland as follows:

'In Britain, Parliament is the place for ventilating the grievances of the citizen - by history, tradition and past and present practice. It is one of the functions of the elected members of Parliament to

154. In the United Kingdom, the Ombudsman is given the title of 'Parliamentary Commissioner'.

...
try to secure that his constituents do not suffer injustice at the hand of the Government. We do not want to create any new institution which would erode the functions of members of parliament in this respect, nor to replace remedies which the British Constitution already provides. Our proposal is to develop those remedies still further. We shall give members of parliament a better instrument which they can use to protect the citizen, namely, the services of a parliamentary commissioner for administration.\(^\text{155}\)

Shortly thereafter, the Bill was introduced\(^\text{156}\). Justice recommendation of routing the complaints through members of parliament was retained but the other recommendation of giving power to ministers to veto any complaint was dropped.

Sir John Foster informed the House of Commons that routing of complaints through members of parliament was retained so that the legislation goes through the parliament.\(^\text{157}\) The Justice Report itself had desired that as soon as the Commissioner had gained some experience (perhaps after five years), he should be empowered to receive complaints direct from members of the public.\(^\text{158}\)

In the course of debate, during the course of the debate on the Bill\(^\text{159}\), Charles Fletcher Curott stressed that the parliamentary commissioner will "strengthen ministerial responsibility and in some cases it will 'reinstate' it.\(^\text{160}\)

Parliament viewed the proposal as "tolerated" to their

156. It was introduced on Feb. 14, 1966.
158. Sir John Hyatt, supra note 2, p. 76.
159. 734 L.C. Deb., cc 43-74 (19, 10, 1966).
Constitution. It was made clear by the leader of the House, Richard Roseman, that the Commissioner will have the jurisdiction to make an inquiry from the top to the bottom of a department, from the lowest clerk to the highest minister to discover exactly what happened.\textsuperscript{162} Around the same time, J.R.B. Mitchell argued in one of the colloquia persuasively to explode the myth of parliamentary control because the concentration of control in Parliament has had and will continue to have a series of inhibiting effects on constitutional development.\textsuperscript{163} He pointed out that the introduction of a 'non-major system' of control would have a liberating effect not only on current practices, but also on constitutional evolution.\textsuperscript{163-4} The Bill was successfully piloted through the Parliament.

The British Parliamentary Committee to begin with did not get much of positive response. It was described as 'Ombudsman',\textsuperscript{164} 'Ombudsfool',\textsuperscript{165} 'frizzled critic',\textsuperscript{166} 'paper tiger',\textsuperscript{167} 'toothless tiger',\textsuperscript{168} 'hamstrung knight',\textsuperscript{169} 'caterpillar in chains',\textsuperscript{170} and a 'pimnick'.\textsuperscript{171} See J.R.B. Mitchell who had viewed the doctrine of ministerial responsibility as a 'dangerous illusion'.\textsuperscript{172} Surprisingly took up the stand that Ombudsman appears to sit uneasily in ministerial responsibility as to be 'irreconcilable' with it because the doctrine is

161. Id., c. 164.
162. Id., c. 47.
163. Id. 164.
171. The Sunday Express, Nov. 16, 1969.
so deep rooted and dominant.†Prof. Albert S. Abel objected on the ground that the King can do no wrong only on the condition that the minister does every wrong and the ombudsman will partially relieve him from this onerous liability by ascribing fault to the individual at fault.‡Prof. Abel did not dilate on the impact of the Crown's Proceeding Act, 1947. Interpreting the adage that 'King can do no wrong.' Under the Act, the general law relating to indemnity and contribution applies to the Crown as if it were a private person.§So ultimately, the liability is fixed on the individual civil servant of the Crown. The objection raised by Prof. Abel 'brings forth only a hollow laugh' since the doctrine of ministerial responsibility seems to be most in disrepute in the very place where it is supposed to apply most rigorously, - namely, the British Parliament.¶

The Parliamentary Commissioner in England can investigate any action of a minister taken in exercise of administrative functions and can require him to furnish information or produce documents. Ministers are also subject to the questioning of the Commissioner. But the area which has been specifically excluded from

177. L. B. Cooper, 'The Case for an Ombudsman' in Rowat, supra note 2, p. 264 at 271.
179. Id. Section 9(1).
the jurisdiction of the Commissioner relates to the proceedings of the cabinet or of any committee of the cabinet. In this manner, unlike in New Zealand and Australia, the decisions of Ministers and not mere recommendations are subject to the scrutiny of the Commissioner. He has also a 'more important' role in relation to Ministers than the French Mediateur has. Ministers have been interviewed and have been subjected to criticism in number of cases by the Parliamentary Commissioner. Special mention needs to be made in this regard of Sachsenhausen, Buccio and Court Line cases.

In its first year, the Commissioner dealt with Sachsenhausen case which has been described a cause celebre and might be conceived as important for the development of Ombudsmanship as have been Marbury v. Madison for judicial review in U.S.A., and Kesavananda Bharati for Indian Constitutional development. The case had a direct bearing on ministerial responsibility. It concerned with the manner in which the Foreign Office had handled claims under the agreement for British victims of Nazi prosecution. The claims on behalf of twelve survivors of ill treatment...

183. When the Commissioner interviews a minister, he normally goes to the department concerned and interviews the minister in his room. This information is based upon personal interview with Mr. A. Thompson, Establishment Officer, office of the Parliamentary Commissioner, London on 22-11-1973.
184. Frank Stacey, supra note 182, pp. 120 and 174.
189. Marbury v. Madison, 1 Cr.137(1803).
were turned down on the ground that the areas where the claimants were held were not part of the main concentration camp. The Commissioner found that the Foreign Office had ignored certain relevant information, had doubted the claimants' veracity and their distinguished war records. The procedure followed by the Foreign Office was biased, the decision was based upon partial and largely irrelevant information and the decision was maintained in disregard of additional information and evidence. In this background, the Commissioner asked the Foreign Office to review the cases. The Foreign Office reviewed the matter and decided to pay them compensation but at the same time, the Foreign Secretary (Minister) maintained that the Parliamentary Commissioner was wrong, that none of his officials had misled him, nobody had 'blundered or bungled' and it was a matter of judgment which he had personally judged. The Foreign Secretary also asserted the extreme version of ministerial responsibility when he pointed out that a very serious constitutional position would be breached if they were to 'start holding officials responsible' for things that were 'done wrong.' He added that if officials could be held responsible and the minister escaped, the practice of minister's being accountable to Parliament would be undermined. That prompted the Foreign Secretary to take this stand is not very clear.

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192. Third Report of the Parliamentary Commissioner for Administration, supra note 193, para 53.
193. Id., paras 63-9.
194. Id., para 66.
195. Id., paras 70-71.
197. Id., col. 117.
The Parliamentary Commissioner had criticised the 'process' and not any 'individual official'.  Infact, the Commissioner's findings made the minister's task easier by exposing irregularities that the Minister himself would want to put right. The Foreign Secretary's comments about ministerial responsibility were subjected to criticism in the House. Thereafter, the matter was considered by a Select Committee. Explaining ministerial responsibility, the Attorney General submitted to the Committee:

"(To attach blame to the individual civil servant, save in certain exceptional cases .... would run counter to this long established tradition .......(i) it is the Minister alone who is responsible for the actions of his department, that the individual civil servant who has contributed to the collective decision of the Department should remain anonymous."  

The Select Committee recognised that (i) the Parliament by having established the office of Parliamentary Commissioner had to some extent undermined the doctrine since an independent investigation within a department was an encroachment upon the Minister's responsibility and (ii) the anonymity of civil servants is likely to be infringed by

198. Third Report of the Parliamentary Commissioner for Administration, supra note 195, para 56(2).
199. R.W. Brown, supra note 198, p.104. It was acknowledged in the House of Commons that without the assistance of the Parliamentary Commissioner, the Government would never have changed its mind; H.C. Deb, supra note 196, cols. 118, 141.
the findings of the Commissioner. In its report on Sachsenhaunau, the Select Committee refrained from publishing passages in evidence which referred to an official by name but it did reserve the right to take evidence from civil servants other than those having the status of Permanent Secretary.

It is submitted that the Select Committee failed to take full note of the existing position of the doctrine of ministerial responsibility. The ministerial responsibility of absolute nature was the 'crux of the English system of government in the nineteenth century'. It was also so in the early part of the twentieth century as the Treasury Solicitor, Sir Maurice Owen had then told the Committee on Minister's Iouers in 1929 that any departure from the principle of ministerial responsibility would imply the adoption of a new theory of government. But the same cannot be said in the last quarter of this century because ever since Cridby case, the principle has become either a fiction or unworkable. It has evolved in such a way that one observer has said that it is 'now little more than a formal principle used by Ministers to deter parliamentary interference in their affairs.'

202. id., pp. 147-151.
203. First report from the Select Committee on the Parliamentary Commissioner for Administration, H.C. 238 of 1967-68, para 15. The Permanent Under-Secretary of State at the Foreign Office, declined to give the Committee the names of the officials mainly concerned with the Sachsenhaunau case, except to indicate that it was considered at Under Secretary level. (id., Evidence, questions 216-217).
204. Second Report, supra note 201, para 30.
206. Id., p.235.
207. Second Report, supra note 201, Evidence, question 660.
208. M.J. C. Ville, supra note 205, p.341.
convention of ministerial responsibility places the
civil servants 'beyond punishment', in the light of
which he has stressed the need to 'review the whole
scheme of ministerial responsibility.' The fiction
created by ministerial responsibility pertaining to
the anonymity of civil servants is of see-through nature.
The principle has come to recognise 'exceptional situations'
where the cover of anonymity cannot be pleaded. These
situations have been so pithily explained by the Secretary
to State after the Crichel Down case: British history
is replete with examples of investigations by different
bodies since the middle of the 17th century. In the
year 1921, the method of investigating the alleged
misconduct of ministers or other public servants used
to be through a Select Parliamentary Committee or Commission
of Inquiry. In 1921, the Tribunals of Inquiry (Evidence)
Act was enacted which provided for the constitution of
Tribunals to inquire into definite matters of urgent
public importance. Number of nationwide inquiries
have been ordered under the Act. Besides the Tribunals
under the Act, other inquiries as in Crichel Down
and Profumo cases have been ordered. Even Departmental
Inquiries have been there to cover such matters which

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211. See, Royal Commission on Tribunals of Inquiry,
     Cmd 3121, Nov. 1966.
212. Ibid., para 6.
213. The Tribunals of Inquiry (Evidence) Act, 1921, Section 1.
214. For list of inquiries held under the Act, refer
     Royal Commission, supra note 211, 'Appendix B', pp. 53-4.
215. Sir Andrew Clark held the public inquiry into
     the disposal of land at Crichel Down, Cmd 9176 (1954).
216. Lord Haring, the Master of the Rolls was appointed
to inquire into Profumo Affair, Cmd 2152 (1963).
are not of the importance of Tribunals under the 1921 Act. These inquiries have looked into the actions of ministers and civil servants and yet ministerial responsibility continues to be intact because the concept has undergone a change. The notion of the collective responsibility of a Government department for decisions does not even block the possible identification of individual civil servants for in the past civil servants have been named in the reports of official inquiries. The Fulton Committee has recommended that the convention of civil service anonymity should be modified so that officials are able to go further in explaining what their departments were doing. The fact of the matter is that the convention is 'more liberal' than it has really been understood by the Select Committee.

**Duccio case report** is a specific example where the ministers, the President of the Board of Trade, was subjected to personal criticism. The case related to the auction of a painting of 13th/14th Century painter Duccio. The painting was bought by someone at the auction sale for £2,700 who resold it to the National Gallery for £150,000. A complaint was lodged about the damage caused by the Board of Trade's dilatoriness and incompetence in acting on the information that the complainants had passed

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217. Royal Commission, supra note 211, para 43, p. 21.
221. Third Report, supra note 136, pp. 16-17.
to the Board of Trade. The countercharge of the President of the Board of Trade in the Parliament was that they would have been greatly helped in their enquiries if they had not met a 'wall of silence' on the part of many people including the complainants who failed to co-operate with the Department. The Commissioner found that there had been minor defects in the administrative performance of the Board of Trade although complaints of dilatoriness and incompetence were not justified. The Commissioner also recorded that the 'wall of silence' statement was misplaced since the complainants had been properly concerned and in no way lacking in integrity.

The report was mild and yet a demand was made for the dismissal of guilty officials and it appeared as if another Chichester case had come up. Members of the opposition in both Houses were keen to debate the Commissioner's findings. The Select Committee considered the Report and recommended that ministerial statement should be made. After the Commissioner's report in June, 1969, the President of the Board of Trade had been moved to another Department and the new President did not feel necessary to make any statement in the House despite the aforementioned recommendation by the Select Committee.

One may attribute the transfer of the President of the Board to another department as a sequel to the report of the Commissioner to save any embarrassment to the Minister concerned in the Parliament. But it is clear from this case that the convention of ministerial responsibility was not adversely affected.

222. Id., pp.4-5.
224. Id., p.17.
225. Sunday Express, 26 June, 1969.
226. By Gregory and Peter Hutchesson, supra note 191, p.396.
227. Id., p.570.
229. By Gregory and Peter Hutchesson, supra note 191, p.572.
In the Court Line case, the Secretary of State for Industry (Minister of Industry) had made a statement in the House of Commons giving a firm assurance that holidays booked with Court Line would be safe and a few weeks later, the Court Line foundered. Complaints were filed that members of the public had been misled by the statements of the Government. On investigation the Commissioner concluded that an unqualified statement was not warranted by the circumstances and consequently the Government could not be absolved of all responsibility for holiday maker's losses arising from the Court Line collapse.

The Secretary of State for Trade (not for Industry) made a statement in the Commons that the Government has noted and respected the criticisms made by the parliamentary Commissioner but it believed that the statements made were right in the difficult circumstances prevailing at that time and has concluded that no further payment be made out of public funds.

The opposition members termed it 'disgraceful' to reject the findings of the Commissioner. They demanded that a Minister who made an 'error of judgment' should at least 'apologise'. The opposition was told that the Government had declined to accept the finding not because Ministers were "stiff-necked" but because they had concluded that they could not agree with him. "Freedom of speech" was raised at this stage that a statement made by a Minister is a matter of policy and not of administration and as such beyond the Commissioner's purview. It was argued that if judgments are to be made on the policies of the

231. "Gregory, Court Line, Mr. Dunn and the 'Imbulator', 30 Parliamentary Affairs, 269 at p.76(1977).
232. Id., p.277.\"
minister, the House of Commons and not anyone else is competent to do that. Finally, the Government carried the day on the party line basis:233

It is a debatable issue, whether every statement made by a minister in the House is a statement of policy? This way, every action of a minister could be a policy action. In Duco case, it was a statement of the minister in the House which was the subject of complaint and the Commissioner did express his opinion on the statement though he took the general view that ministerial statements were not instances of administrative action.234 Even otherwise, a commissioner is not bound by a predecessor's jurisdictional rulings.235 In Court Line Report, the Commissioner did not even discuss the question of jurisdiction for it was never raised, on the other hand his taking up of the complaint was welcomed.236 If on this highly technical ground, the Commissioner would have refused to investigate, it would not have enhanced the reputation of the office, rather it would have been interpreted that confronted by a powerful minister, the Commissioner even refused to 'bark'.237 In the ultimate analysis, the Court Line case is an example of the clear position that finally Ministers are answerable to the House and the report of the Commissioner helps the House in knowing the details in order to make the Minister truly accountable. Inspite of the Government's rejection of the report, it must have cautioned Ministers to be more 'careful' in making statements in future which by itself is no mean achievement of the Commissioner.

233:  \textit{ibid.} pp. 77-79.
234:  \textit{ibid.} p. 79.
235:  \textit{ibid.}
236:  \textit{ibid.} p. 39.
Besides this experience of the Commissioner, the office of the Comptroller and Auditor-General has been functioning in the U.K. since the year 1916 and has been described as the 'Financial Ombudsman' by some voices. Even at that time Gladstone proposed this office, and some voices had been raised that it would undermine the historic role of the Parliament but the long experience has proved it otherwise. The office of the parliamentary Commissioner has been designed on the pattern of the Comptroller and Auditor-General's Office. It is interesting to note that the first Parliamentary Commissioner was an ex-Comptroller and Auditor-General. So he passed from one Ombudsman office to another. The Commissioner has interpreted his office according to the style of the office of the Comptroller and Auditor-General, limiting his role to ex-post-facto review. No one has suggested that the functions of the Comptroller and Auditor-General conflict with ministerial responsibility. On the other hand, the office has proved to be a great help to ministerial responsibility. In fact, the doctrine of ministerial responsibility will be more effectively complied with the assistance of the Parliamentary Commissioner.

239. The Exchequer Audit Act, 1916. This Act provided for the office of the Comptroller & Auditor-General.
240. 734 H.C. Deb., col. 64 (18.10.1966).
243. Frank Stacey, supra note 182, p.137.
244. L.B. Cooper, supra note 177, p.271; J. F. Northey, supra note 125, p.137.
246. L.B. Cooper, supra note 177, pp.264-72.
The Parliamentary Commissioner is over a decade old. It has been acknowledged that the system has 'worked well' and has demonstrated its ability to expose the inadequacy of a decision which the conventional methods of parliamentary questions and lobbying of Ministers had failed to uncover. It has been accepted as a permanent part of the Constitution.

The need for the inclusion of ministers has been expressed in Canada as well for ministers have not been found free from bias, arbitrariness, self-interest and even at times from outright corruption. In a recent report, it has been recommended that an ombudsman should not be able to apply his powers of investigation to a minister but should be able to seek an explanation of the basis for a decision made by the minister. Some provinces have followed the example of New Zealand and some have excluded only cabinet decisions and not individual minister's actions. In spite of all this caution, occasional ripples have taken place. In an instance of 1971, though the Deputy Minister concurred with the recommendation of the Ombudsman of Nova Scotia that a department employee be reinstated, yet the minister concerned did not finally agree. This was adversely commented upon by the Ombudsman. The Ombudsman's action in turn was criticised by the Attorney General, according to whom if the Ombudsman is given the power to overrule a minister, it will be a ‘negation’ of the concept.

247. David Addicome, supra note 133, p.3.
248. Id., p.1.
249. Novat, supra note 60, p.22. Specific examples have also been given.
251. Anderson, supra 3, p.57. Alberta and Ontario have followed the New Zealand approach. British Columbia and Ottawa exclude only the Cabinet decisions.
of responsible government. So far, a notable case that has caused a stir is from Ontario. The Ombudsman in his 'Pickering' case report substantiated that the property owners had been given false information and had been subjected to pressure tactics and harassment by government agents, and an appropriate remedy to them was called for.²⁵³ The Minister in charge labelled the report, biased, inaccurate and incomplete.²⁵⁴ Civil servants reacted that their 'cloak of anonymity' has been stripped away;²⁵⁵ The matter was referred to a Royal Commission which heard evidence from only one of the twenty-nine property owners and concluded that none of them had been misled by the Ontario Government agents.²⁵⁶ The Ombudsman dismissed the report of the Commission as 'absolutely valueless'²⁵⁷ and sternly reprimanded the Select Committee of the Ontario legislature for allowing 'a kind of inquisitorial proceedings' in which members of his staff were subjected to cross-examination and threatened to go to the Premier and the leader of the opposition.²⁵⁸ Finally, the Ombudsman resigned.²⁵⁹ It is unfortunate that the dispute was referred to a Commission after it had been examined by the Ombudsman. The proper course would have been that the report of the Ombudsman should have been examined by the Select Committee which should have reported to the legislature for an appropriate action.

²⁵⁴ Financial Post, 13 (July 31, 1976).
²⁵⁵ Ibid.
²⁵⁷ Ibid.
Elsewhere in the commonwealth, the institution of Ombudsman is still coming up. The administrative acts of a Minister are within the jurisdiction of the Guyanese Ombudsman but not so in Mauritius and Fiji. The Ombudsman of Fiji has expressed the view that if the decision of a Minister is based on the recommendation of say his Permanent Secretary, then that recommendation can be investigated and if found to be contrary to law, manifestly unreasonable or based on wrong facts, then the officer concerned can be asked to modify the recommendation. This means that ultimately the decision of the Minister will be changed. The Ombudsman has suggested that by means of consultation, both with a Minister and his Permanent Secretary, his investigations can contribute towards increased efficiency, better relations and fair play, therefore, he should, whenever necessary, examine recommendations made to a Minister.

In the light of the experience of Ombudsman both in Scandinavia and Commonwealth, it cannot be said that the issue of impact of Ombudsman on ministerial responsibility stands fully settled but it may not be wrong to say that the serious doubts that had been expressed in early 60's are no more entertained now in early 90's.

Under the Indian Constitution, the Council of Ministers is collectively responsible to the House of People.

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262. Ibid.
263. Constitution of India, Article 75(3). In case of States, they are responsible to the Legislative Assembly of the State, Article 164(2).
and each Minister individually holds the office during the pleasure of the President. So the whole ministry continues in office so long as it has the confidence of the House of People. When it loses the confidence, it has to step down otherwise the President can dismiss the ministry. The President’s power can also be invoked by the Prime Minister to get rid of a minister who may have lost his confidence. It is for this reason that the Constitution does not provide for the impeachment of ministers. Though the constitution has not specifically provided for individual responsibility of ministers to the House of People but this does not mean that it does not exist. The principle collective responsibility does not free the individual Ministers from their personal and individual responsibility. The opinion of the Administrative Reforms Commission Study Team that ‘no minister is individually

264. Id., article 75(2). As regards States, during the pleasure of the Governor, article 164(1).

265. An amendment had been moved in the Draft Constitution to the effect that a member of the Cabinet shall not be liable to be removed except on impeachment by the House on the ground of corruption or treason or contravention of laws of the country or deliberate adoption of policy detrimental to the interests of the State. This amendment was not carried out. VII C.A.R, 1163 (31, 12, 1949). Also refer, K.C. Joshi, ‘The Governor’s power to dismiss the Ministers’, 12 J.L.L.J., 126 at p. 136 (1970); T.N. Seervai, Constitutional Law of India: A Critical Commentary, 772 (1987).

responsible is contrary to parliamentary practice elsewhere and to the actual practice under the Indian Constitution. Dr. B.R. Ambedkar had explained that the normal mode of dismissal of a minister or ministry is by a vote of no-confidence in the House of the People. But it may sometimes happen that even though a Minister's administration be corrupt, he may still command the confidence of the majority of the House. In such cases, the President is given the power to dismiss a corrupt or otherwise undesirable minister. This power of course is to be exercised by the President on the recommendation of the Prime Minister. Not only this, there may be criticism in the House of a particular minister for his personal acts or for the acts of the Department under his charge. In such a situation, either the minster will himself resign or the Prime Minister will ask him to do so. If the erring minister does not abide by it, the Prime Minister will ask the President to dismiss the minister in question. There have been instances where ministers have resigned for wrongs in their departments.

269. To mention some instances: Shri Lal Bahadur Shastri because of a railway accident - L.S. Deb. cc 993-97, (26-11-1956); Shri T.T. Krishnamachari on account of the financial transactions of the LIC with Shri Mundhra, an industrialist - L.S. Deb. cc 1292 (12-2-1959); Shri S.K. Jain because of strong criticism of the food situation in the country - L.S. Deb. cc 2496-2594 (14-1-1959), cc 3566-3679, (21-3-1959), cc 3547-3550, (22-9-1959); Shri Krishna Menon at the time of Chinese invasion - L.S. Deb. cc 357-59, (9-11-1962); Shri Ulzari Lal Pandya as a result of his criticism for failure to maintain law and order, L.S. Deb. cc 2493-2522 (10-11-1962).
and on charges of corruption keeping in view the mood of the House. In view of all this, it cannot be argued that there is no individual responsibility of ministers to the House of People.

Another point which has been made by the Study Team of Administrative Reforms Commission is that under the Constitution, ministers are only advisers to the Head of State who is responsible for all the executive acts. This is a misconstruction of the provisions of the Constitution. Articles 74 and 75 make it abundantly clear that the President is only a constitutional head. Article 74 provides for a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions and under article 75, the Council of Ministers has been made collectively responsible to the House of People. The

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70. The resignation of Shri K. C. Malaviya, Minister for Mines and Oil in 1963 arose out of the transactions which took place at personal and official levels between him and Sirajuddin and Co., at Calcutta; Shri T. C. Krishnasachari, Minister of Finance in 1962, resigned on the charge of having misused his position by conferring benefits on his son; Shri H. Chandra Reddy, Minister for Steel, Mines and Metals resigned because of the verdict of the High Court that the Minister was guilty of corrupt practices during the General Elections of 1967.

71. Supra note 27.
President is not accountable under the Constitution.\(^2\)

He does not act of his own. He acts on the advice of the Council of Ministers. How can such a person who, under the Constitution, has to act upon someone’s advice, be made responsible? Merely because the executive action is required to be expressed in the name of the President, it cannot be concluded that it is the President who is responsible. It is just a mode of conducting the business of the Government. The fact of the matter is that it is the Council of Ministers which is responsible to the House.

The recommendation of the study team was that it would not be advisable to bring ministers under the jurisdiction of the ombudsman since they are responsible to the legislature and any allegation against them of corruption or oppression or injustice should be dealt with by the legislature itself. According to it, no other authority should intervene between a minister and the House. If any investigation is necessary which the House is not in a position to undertake, the House may appoint a committee or better set up a commission under the Commissions of Inquiry Act. The exclusion was advocated.

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\(^3\) Constitution of India, Article 77(1).
only with regard to policy decisions or allegations of personal nature and not with regard to such acts of ministers which fall within their administrative duties on recommendation made by the officials. This report had been made in August, 1966. Near about the same time, the Administrative Reforms Commission gave careful thought to the problem and concluded that the ministerial decisions should be included within the scope of the proposed Lokpal. The Commission strongly felt the need for providing an opportunity to an adversely affected citizen to ventilate his grievances against the order of a minister. Since the action will be subject to the parliamentary control, the Commission was of the view that the ministerial responsibility will not be diluted, rather it could strengthen it. Consequently, the Lokpal jurisdiction was provided over the Ministers in its Bill of 1964. Then the Bill came up before the Joint Select Committee, Prof. I.K. Tiplah in his evidence before it, welcomed the institution but opposed tribunals’ jurisdiction to go into grievances against Ministers. Virtually, his whole evidence centred around the issue of Ministers. He was apprehensive that an evil minded Lokpal will even bring down the fall of the Government. He felt that it would be unfair if an high official is flung on the side of the opposition. He was desirous that only the Parliament should be the

274. Supra note 267, p.4.
276. Id., pp.16-17.
277. The Lokpal and Lokayuktas Bill, 1963 (hereinafter referred as Bill of 1963) clause 7 read with cl.2(b), (d) and (g).
279. Id., pp.94-107.
280. Id., p.95.
281. Id.,
custodian of criticising or of taking action against Ministers. He feared that this will kill the entire working of the parliamentary system and will mutilate all the institutions that we have. On the other hand, Prof. Tripathi was in favour of using the machinery of Commissions of Inquiry from time to time, when he was confronted with the fact that we have many Ministers who are corrupt, he seriously suggested that we need to do nothing about it, we deserve them. In contrast to this opposition from Prof. Tripathi, other experts who appeared before the Committee, supported the inclusion of Ministers within the jurisdiction of Lokpal. So strong was the opinion in favour of inclusion that when Mr. Bhalerao was asked if you consider the inclusion of Ministers healthy from the point of view of the present state of democracy in India, he reacted sharply that if Ministers are not to be included, it would be better to tear off the Bill. Having been convinced that Lokpal will cause no violation of ministerial responsibility, the Joint Select Committee suggested no change in this regard. There was only one note of dissent when the Bill came before the Lok Sabha, the main issue of Ministerial Responsibility was clouded by the demand to include the Prime Minister within the purview of Lokpal which was rejected by the Government. The Bill of
1971 made no change. The main emphasis in the Bill of 1977 was shifted on corruption in political circles. It covered allegations of misconduct besides others against the FMs, Central Ministers and Chief Ministers. But the issue of ministerial responsibility did not figure in the discussions of the Joint Committee of the Lok Sabha. In this whole background, it is pertinent to examine the objections which have been raised against the Lokpal in regard to its jurisdiction over ministers:

(i) The main objection is that in accordance with the Indian Constitutional scheme, ministers are responsible only to the legislature to which they belong, meaning thereby that ministerial responsibility contemplates that ministers can only be questioned in the legislature. It is also contended that legislatures have sufficient machinery to control them. The Supreme Court had occasion to deal with this issue in the Karnataka Case where the constitutionality of the Commissions of Inquiry Act, 1952 had been challenged. It held that the collective ministerial responsibility to the legislature as provided for in Arts. 75(3) and 164(2) cannot operate as a bar against the institution of inquiries by Commissions set up under the Act. The Supreme Court speaking through Chandrachud J., (as he then was) pointed out

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293. Lokpal Bill, 1977 (hereinafter referred as Bill of 1977), cl. 10 read with cl. 2(g) and 3.
294. Id., cl.2(g).
297. Supra note 278, Prof. K.K. Tripathi, p.95.
298. Id.
that whatever may be the findings of a Commission of Inquiry, the Council of Ministers, whether at the Centre or in the States, continues to be collectively answerable or accountable to the House of People or the Legislative Assembly.299-B

M.H. Beg., C.J. in his leading judgment repelled the argument that the ministerial responsibility provided for under the Constitution excludes any other inquiry and observed:

"To accept such contentions .... is to place Ministers .... completely outside the scope of legal answerability on the ground that they were only politically responsible to and controllable by appropriate legislatures even when they, in the course of purported exercise of official powers, act dishonestly and corruptly and even commit criminal offences. This would mean that even if a minister receives bribes, .... he could not be made answerable in ordinary courts or be subjected to criminal proceedings. If no inquiry under any law into his conduct was possible simply because the act complained of was done by a Minister in purported exercise of a power vested in him by virtue of his ministerial office, he would be placed in a privileged position above the ordinary processes of law applicable to other citizens .... He would thus become a legally irresponsible despot above the ordinary law."

He added:

": .... If every type of inquiry and investigation except one by the House of the Legislature of which

300. Ida, p.105.
he is a member is barred, the very first step
towards a prosecution for my serious crime would
be shut out in limine. ... Such a consequence
of the constitutional provisions ... could not,
in our opinion, be possibly within the contemplation
of our Constitution makers. Indeed, such a view
would clearly violate the express and very salutary

Moreover, the Parliament cannot be made the only custodian
of the Ministers. It does not have sufficient means to
control them. In fact, Parliament is a weak body in
reaching the facts in a given case of questionable act
or conduct of a minister and in taking the action thereupon.
The parliamentary majority makes the task difficult.
Parliamentary means like the question Hours and Adjournment
Motions have only limited utility. The administration
and the minister, normally act in collusion and to break
this barrier is not very easy. Replies are prepared in
such a way that the truth of the matter is not revealed.
Gradually, the parliament has lost grip on the executive.

The System of Parliamentary Committees has an
element of 'political affiliation' and normally their
reports are divided on party lines. The history
of such investigations in the U.K. is an unfortunate one
as it is revealed by the Marconi Scandal. It was precisely

301. \textit{Ibid.}
302. \textit{The Hindustan Times, Delhi, 10(11, 1979).} Refer to
the arguments of \textit{Shri Karatwal} and the observations
of Y.V. Chandrachud, C.J., and P.N. Bhagwati, J.
303. \textit{Supra note 2, Hyatt, paras 92-94, pp. 39-40.}
304. \textit{I.d., para 96, p.41.}
305. \textit{The Times of India, Delhi, 1,11, 1979.}
306. \textit{Sir Cyril Salmon, Tribunals of Inquiry, 6(1967).}
307. \textit{Ibid.} The Marconi Scandal was that in 1912, the Postmaster
General in a liberal Government accepted a tender by
the English Marconi Company for construction of wireless
telegraph stations. Rumours spread that the Government
for this reason that the system of Parliamentary Committees was replaced with the Tribunal of Inquiry (Evidence) Act, 1921 in England. The position is no different in India.

The experience of the U.K. should be a pathsetter for us. S.L. Shashker has rightly pointed out that the 'Parliament as a body is not a fit instrument' to undertake the overseeing of the administration. It is not safe to make the Parliament the solitary custodian of the ministers for it does not have sufficient non-partisan means at its disposal.

On the other hand, Commissions have been appointed under the Commissions of Inquiry Act, 1952 to probe into the conduct of Ministers and Ministers. They had corruptly favoured the Marconi Company. The Select Parliamentary Committee was appointed to investigate these rumours. The majority report of the Liberal members of the Committee enumerated the members of the Government whereas a minority report by the Conservative members of the Committee found that these members of the Govt. had been guilty of gross impropriety. When the reports came to be debated in the House of Commons, the House was divided strictly on party lines and by a majority enumerated the ministers from all the blame.


309. (i) The Central Govt. by its notification on 1-11-1963 appointed Mr. Justice S.R. Das, formerly Chief Justice of India as one-man Commission to inquire into certain allegations against S. Partap Singh Paton, the then Chief Minister of Punjab.

(ii) The Central Govt. by its notification on 23-5-1977 appointed Mr. Justice A.N. Grover, retired Judge of the Supreme Court to inquire into charges of corruption, nepotism, favouritism or misuse of Governmental power against the Chief Minister H.N. Jyoti and certain other Ministers.

(iii) The Govt. of Karnataka by its notification on 19-5-77 appointed Mr. Justice Mir Iqbal Hussain, retired Judge of Karnataka High Court to inquire into allegations of irregularities against the then Chief Minister and other Ministers.

have not been held to be violative of ministerial responsibility to the Parliament. They have been declared to be fact-finding bodies, 'meant only to instruct the mind of the Government' so that it does not act in exercise of its executive power, 'otherwise than in accordance with the dictates of justice and equity'. The Commissions do not produce any document of judicial nature, have no judicial powers and their reports are purely of recommendatory nature. On receipt of the report, it is up to the Government to take or not to take any action, depending upon the nature of findings. As pointed out earlier, provisions of either Art. 75(3) or 164(2) have been held as no bar against the institution of inquiries by Commissions. It is hard to understand that if these Commissions are not violative of individual or collective ministerial responsibility, how would a Lokpal inquiry be in contravention of it? The Lokpal is meant to have similar characteristics, a fact-finding body so that the Government and the Parliament could be posted with the facts and the action could be taken in accordance with them. The collective responsibility to the House concerns only to the Govt. policies and decisions and not to individual acts of misconduct. Under the veil of collective responsibility, individual acts of misconduct cannot be condoned. In fact, the House will be better equipped with the report of the Lokpal to visit the misdeeds of erring ministers. The House will be able to exercise its control more effectively.

313. Karnataka State v. UOI, AIR 1973 SC 68 at 75.
315. Id., p.70.
Standing Commission in the form of Lokpal will have an added advantage in contrast to ad-hoc Commissions. The Govt. has found itself on number of occasions in a predicament to appoint or not to appoint a Commission. Prime Ministers Nehru, Shastri and Desai had to refer matters to Judges to find out whether prima facie cases have been made out to constitute Commissions or not and in one case, the Chief Justice referred back the matter for it was thought that it would be improper to involve the high office of Chief Justice in such a controversy. In view of the Lokpal machinery, the Government will be free from such situations. More than this, there are two other drawbacks in case of ad-hoc Commissions. It is up to the Govt. of the day to agree to appoint a Commission or not and normally no Govt. is willing to have a Commission to probe into the actions of its own ministers. Secondly, the Govt. is free to choose a person of its own choice and when a person is appointed for a specific purpose, it is difficult to completely insulate him of the Government’s interest. All this will not apply to the Lokpal. The Lokpal as a standing body will be available


317. Lal Bahadur Shastri referred the matter to the Chief Justice of India when charges were levelled against T.T. Krishnamachari to know whether a prima facie case was made out or not. The Hindu, January 4, 1966.

318. Morarji Desai in his statement in the Rajya Sabha on 24-9-1979 offered that any charge of corruption made by any member relating to the period after he took office can be referred to the Chief Justice for his consideration and opinion.

319. In the matter of allegations against Kantilal Desai and the relatives of Charan Singh, the then Deputy Prime Minister. See, Indian Express, Chandigarh, 1.5.1979; The Tribune, Chandigarh, 1.5.1979.
to anyone who wishes to make use of it. Prof. I.K. Tripathi has preference for Commissions of Inquiry. According to him, one does not know who the Commissioner will be to deal with a particular matter, whereas it is not so in case of the Lokpal. He explains that the Commissioner will have no potential for political mischief whereas the person in the capacity of Lokpal will have because he knows that he can turn tables against anybody.\(^{320}\) An independent body, free from any kind of influence is needed which should dispassionately give the facts for an appropriate action. It is submitted that Prof. Tripathi’s preference is far from it. If his argument is taken to the logical end, it would mean that since the regular courts also have the potential of turning table against any one, they be wound up and only ad hoc or special courts be constituted from time to time in matters which are voiced against the Govt. Tripathi fears that Lokpal reports will be reports to the opposition and an evil minded Lokpal will even turn down the Government.\(^{321}\) It is no doubt true that in our country reckless charges are hurled against those holding public offices with the abundance of ‘confetti at a wedding’.\(^{322}\) But this does not mean that they should just be ignored and there be no regular body to look into them. It is quite possible that in many cases, the charges will be found baseless and the Lokpal will exonerate them. This will not only add to the prestige and image of the Government, it will be equally instrumental in silencing the opposition. Many a time, even when there is no questionable act on

\(^{320}\) Supra note 73, Prof. I.K. Tripathi, p.105.


the part of the Government, it finds it difficult to convince the opposition of the truth of the matter. The reports of the Lokpal will help the Government in rehabilitating itself not only in the Parliament but also in the mind of the general public. There may be occasions when the opposition is able to make use of the report of the Lokpal. But there seems to be nothing wrong in it. It often happens that the opposition is unable to get at the facts which are normally in the custody of the Government. The supply of facts to the Parliament will help the opposition to take up its role in a more responsible manner. Equally, it will help the government in being more vigilant and careful in its actions. And if in this process, an occasion comes when the Government has bungled so much that it is unable to sustain itself in spite of its majority and the opposition is able to highlight the Government’s misdoings, it will certainly be healthy for the growth of Indian democracy. There is no reason to be unnecessarily apprehensive of the role of the Lokpal. It needs to be remembered that he will have all the attributes of a watchdog and yet will be nobody’s poodle. With the help of this watchman, the ministerial responsibility to the Parliament will become more real than what it has been hitherto.

(ii) Based upon the main objection, another contention which is put forward is that only an ‘officer of the Parliament’ can probe into the conduct of ministers and not an ‘outsider.’ It is argued by Prof. Tripathi that since the Lokpal is not proposed to be appointed out

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323. Supra note 279, p.106.
324. Id., p.102.
of the members of parliament, he will be an outsider and thereby the ministerial responsibility will be violated. The appointment of a Member of Parliament as Lokpal will defeat the very object of the institution itself. If a Member of the ruling party is appointed, it will be contended that he will be partial towards his own Ministers and if a Member of the opposition is appointed, it will be argued that he cannot be impartial. So the objectivity of a third person will not be there which is the main sustaining force of this institution. The Lokpal has to be a person who is free from party affiliations. On the other hand, the Lokpal is contemplated to be one really belonging to the parliamentary constellation essentially an extended arm of the parliamentary apparatus and as a powerful limb of the Parliament. A perusal of the provisions of the Bills that have been introduced in the Lok Sabha will show that the Lokpal is intended to be a parliamentary institution. This is clear from its proposed method of appointment, removal and the requirement of the submission of special and annual reports. Jain has rightly pointed out that he will be acting as the eyes of the Parliament and should not be regarded as anything foreign to the parliamentary form of government. The Lokpal should be able to function

325. Id., pp.94-107.
326. Id., p.191.
327. Id., p.194.
328. Id., p.62.
331. Bill of 1969, clause 12(5) to (7); Bill of 1971, clause 12(5) to (7); Bill of 1977, clause D(3) to (5).
without any fear or favour, not as a representative of the Government but that of the Parliament. The ombudsman
had its birth as a parliamentary institution and the day
it ceases to be one, it will lose its object and purpose.
The proposed Lokpal is intended to be appointed on behalf
of the Parliament. There should also be a standing
committee of the Parliament to consider the reports of
the Lokpal.\textsuperscript{339} This will not only add to its parliamentary
base but will ultimately help in making the ministerial
responsibility more substantive and real. The lokpal
will act like the parliamentary panchayats, will be the
spine and substance of parliamentary life\textsuperscript{334} rather than
being a threat to constitutional responsibility of
ministers to the parliament.

Besides this, the Comptroller and Auditor-General
has been acting as the financial Lokpal since the
Government of India Act, 1935.\textsuperscript{335} He acts as the guardian
of the purse and sees that nothing is spent without the
authority of Parliament.\textsuperscript{336} It is necessary that some
independent person should scrutinise the government
spending and check whether it has been in accordance with
parliamentary intentions otherwise parliamentary control
over appropriations may be frustrated.\textsuperscript{337} The functions
of the Lokpal will be to a good extent akin to the
Comptroller’s functions. Indeed, the Lokpal has been
favourably compared with the Comptroller.\textsuperscript{338}

\textsuperscript{333} Supra note 279, S.P. Chauhan, P.10, L.K. Singhvi, p.199,
Supra note 309, p.223; M.R. Jain, Lokpal: Ombudsman in
India, 1979, p.196.

\textsuperscript{334} Prakashchand Sinha’s speech in the Lok Sabha,
\textit{Lok Sabha}, 2.10352 (23.6.1965).

\textsuperscript{335} Government of India Act, 1935, Sec.166;
Constitution of India, Articles 143-51.

\textsuperscript{336} M.P. Bhasin, \textit{Commentary on the Constitution of India},


\textsuperscript{338} Supra note 279, L.K. Singhvi, p.199;
M.R. Bhakta, supra note 308, p.223.
institution could function for so long without causing any bruise to ministerial responsibility, there could be no justification now to be apprehensive about the Lokpal.

(iii) Another fundamental issue that is raised against the Lokpal is that it will lift the veil which ministerial responsibility provides to the officials. The argument is that regarding whatever takes place in the department, the minister concerned is answerable, has to shoulder the responsibility and the officials are not to be mentioned. With the coming in of the Lokpal, the officials are likely to be named which means that the cover of anonymity will no more be available to them. It is no doubt true that generally, the parliament does not discuss the cases of individual officers by name and the ministers also do not mention the names to praise or to abuse them. This is because the officers get no chance to defend themselves in the House and the ministers may lose their sense of responsibility to the parliament and may take shelter behind the governmental officials. But otherwise there is no absolute rule or even practice that the names cannot be disclosed. It has been acknowledged in the Parliament that the minister is not always responsible because it is impossible for him to take full responsibility for the acts of his subordinates, even otherwise the principle of vicarious responsibility of ministers cannot be extended to the point of holding them responsible for the improprieties of their civil servants. There are numerous instances in the Parliament when officials...

have been mentioned by name and have come in for criticism. There are situations when actually they are not mentioned and still it is well known in and outside the Parliament, who are the concerned officials. Officials are also specifically held responsible for


344. *Supra* note 339, pp 187-88; Shri Gulzar Lal Nanda, then Minister of Home Affairs resigned on Nov. 7, 1966 for Government's failure to maintain law and order but disowned his own responsibility and attributed it to his Home Secretary, p.230.
financial irregularities, unless regularised by Parliament. 345

Those officials who make a statement which is contrary to government decision or policy, are censured by Parliament by name and the government is directed to take a suitable disciplinary action against them. 346 Officers of the government are answerable to the Committee's of the Parliament and through their reports, they are identified. 347 The reports of Commissions of Inquiry may as well name the officers. 348 In the light of all this, the basis for objection to Lokpal's inquiries evades comprehension. Ministerial responsibility does not provide a full cover of anonymity to officials as is evident from the past record of thirty years of Indian Parliament. The Lokpal will certainly be cautious in his reports as not to identify different officials unless it is otherwise very essential. On the other hand, his reports will be a help in exposing the baseless accusations which are often levelled against them. They will have the opportunity to explain their conduct to the Lokpal which otherwise they do not get before the parliament. Ministers will not be in a position to throw the responsibility on to their subordinates unless the circumstances will so warrant and in those cases where the minister wishes to own the responsibility, there will be nothing to prevent him from that. Infact, ministers will not be able to

345, Ibid, p.183;
346, Supra note 339, p.207.
unnecessarily shield the officers as also will not be able to escape their own responsibility. In the ultimate analysis, the Lokpal inquiries will help parliamentary and democratic process and establish the dignity and the majesty of the parliament rather than violating ministerial responsibility.

(iv) Ministerial responsibility will not be impaired for another reason. The Lokpal is not intended to look into the merits of a decision of a minister, as also Cabinet decisions fall outside his jurisdiction. We will be probing to find out, (a) whether the decision was actuated by personal interest or other improper or corrupt motives; (b) whether the minister abused his position to cause harm or undue hardship to any other person; (c) whether the minister allowed his position to be taken advantage of by any of his relatives or associates; or (d) whether the minister acted in a manner which was not in accordance with the norms of integrity and conduct. On these matters, the Lokpal will report his findings to the parliament. His whole exercise will be to find out corruption and not to review the merits of a policy decision. The base of a good Government is that its actions should be made public. A cover over the min will mean irresponsibility rather than ministerial responsibility.

349. There have been instances where the Ministers have shielded actions of their departments. See, Motilal C. Setaivad, My Life, Law and Other Things, 173 (1970).

350. Bill of 1968, cl.7 read with cl.2(b) and (d); Bill of 1971; Cl.7 read with cl.2(b) and (d); Bill of 1977, cl.10 read with cl.3.

351. Bill of 1968, cl.11(5); Bill of 1971, cl.11(5); Bill of 1977, cl.15(4).

352. Bill of 1968, cl.2(b); Bill of 1971, cl.2(b); Bill of 1977, cl.3.

353. See, Anderson, supra note 3, p.70.
The primary fact that ministers are not above human weaknesses cannot be overlooked. The need for Lokpal is rather more in the presence of growing cabinet domination and lack of independent investigatory powers with Members of Parliament. Collective responsibility has proved neither conducive nor congenial to parliamentary control over the administration as the concept instead of securing their accountability, serves as a cover for arbitrariness and irresponsibility on their part. Ministerial responsibility can be meaningful only if the Parliament is well informed. The responsibility cannot be allowed to operate as a check-post for the supply of information to the Parliament. Infact, it is not so, as is clear from the role that the press plays. There are no rules and regulations which prevent the press from exposing excesses, bungling and lethargy on the part our ministers and civil servants. The press helps in kindling public opinion which ultimately leads to parliamentary action. The role of the Lokpal will be very much similar to that of the press. It has been rightly observed by Prof. P. W. Wade that the Ombudsman operates in exactly the area where the doctrine of ministerial responsibility failed to work efficiently and has pointed out that far from weakening ministerial responsibility, the Ombudsman has supplemented it and helped it to work better by being able to investigate and report so that members of parliament

354. Povat, supra note 60, p. 25.
357. S. L. Shukla, supra note 339, p. 199.
can, if necessary, call the minister to account. In this manner, it provides more vitality to the parliamentary control. Rule of ministerial responsibility helps the administration to function in a secretive manner, the Lokpal will break this process and will help in bringing infractions to light. Ministerial responsibility in its present form largely makes the ministers' Judge of their own actions. This is because the ministers themselves are in possession of the information and effort is made to supply only that much information which suits them. In this kind of a set up, the purpose of the responsibility stands defeated. The Lokpal investigations will prove instrumental in enforcing the basic precept of natural Justice that 'no one should be a Judge in one's own case' and in achieving the purpose for which the responsibility of the ministers has been provided in the Constitution.

It is clear from all this that there is no reason to believe that the introduction of Lokpal will alter the 'basic structure' of the Parliamentary Government in India. In some of the States, where the Lokayuktas are already functioning, ministers have themselves offered to be inquired into by them.  

360, Anderson, supra note 3, p.73.
361, Shri Ram Narayan Yadav, Chief Minister of U.P., threw a challenge to the opposition to lodge a complaint with the Lokayukta if they have any complaint against him, Times of India, N. Delhi; 27.4.73; Similarly when charges were levelled against Shri A.K. Intuly, Minister for Buildings and Communications in Bombay, he requested the Governor to refer them to the Lokayukta, Hindu, 12-6-1975.
It needs to be realised that the traditional principle of ministerial responsibility to the Parliament as it initially applied in England is no more applicable in the changed context of the role of the State in any parliamentary system. This is not so in case of ministerial responsibility alone. The doctrine of Rule of Law as originally enunciated by A.V. Dicey, is not applicable now in the same form. The Crown immunity is no more the same as it was prior to 1947. The absolute concepts of sovereignty and separation of powers are no more workable. In the whole changed context, it has been rightly argued by Prof. S.K. Agarwal that why only the principle of ministerial responsibility should be retained in its virginal purity?36? Infact, the principle of ministerial responsibility has gradually weakened in exercising control over the executive. It needs to be strengthened rather than to be abandoned. The Lokpal will provide the required strength to make the ministerial responsibility real, effective and efficacious. The Lokpal will fit snugly into the parliamentary set up of India.