The Centre has so far not been able to enact its Lokpal legislation. In the meantime, the idea has passed like a wave in the States. More number of States have passed through the legislation stage but actually the institution has come into operation in Maharashtra, Rajasthan, Bihar, U.P. and Karnataka. There are States where the institution is under consideration and there are some where no thought as yet has been given. The State of Kerala has

2. Legislations have been passed in the following States:
   (i) The Orissa Lokpal and Lokayuktas Act, 1970
       (hereinafter known as Orissa Act);
   (ii) The Maharashtra Lokayukta and Pra-Lokayuktas Act, 1971
        (hereinafter known as Maharashtra Act);
   (iii) The Rajasthan Lokayukta and Prah-Lokayuktas Act, 1973
        (hereinafter known as Rajasthan Act);
   (iv) The Bihar Lokayuktas Act, 1973
        (hereinafter known as Bihar Act);
   (v) The Uttar Pradesh Lokayukta and Pra-Lokayuktas Act, 1975
        (hereinafter known as UP Act);
   (vi) The Karnataka Lokayukta Ordinance, 1979
        (hereinafter known as Karnataka Ordinance).
3. Information from the file of Dr. V. Jain, Director, Indian Law Institute, New Delhi: Andhra Pradesh: letter from Mr. V. Harmantha Rao (dated March 4, 1976) stating the Government's intention to legislate in this area; Himachal Pradesh: letter from Mr. R. Bhattacharyya, Director of Vigilance (dated 31.12.75) informing that the Bill had been introduced in the Vidhan Sabha, Dunjab; Times of India, New Delhi, 3(7.3.1976).
4. Information from the file of Dr. V. Jain, Ibid: Nagaland: letter from Mr. I. Longkumer, Secretary (dated March 10, 1976); West Bengal: letter from Mr. M. Panda, Deputy Secretary (dated 17th Feb., 1976) informing that the matter will be considered after the central Act on the subject is passed; Meghalaya: letter from Mr. R. Lyngdoh, Under Secretary (dated 27th December, 1975); Jharkhand: letter from Mr. H. Singh, Deputy Secretary (dated 21st January, 1976); Manipur: letter from Mr. P. Mukhopadhyay (dated Dec. 24, 1975)
expressed its preference to the use of Commissions of
Inquiry rather than the Ombudsman. The States of Jammu
and Kashmir and Tamil Nadu have passed different
legislations to prevent and deal with corruption.
There is certainly an awakening in the country that clean
administration free from corruption and maladministration
is essential for providing the solid foundation to the
democratic structure which the Constitution envisages.
It has been acknowledged by the Lokayukta of Rajasthan
that corruption is a product of socially unhealthy, diseased
and indisciplined mind, totally ignorant of and indifferent
to the rule of law and cautioned that this social vice
needs to be nipped in the bud otherwise it has the potency
of spreading its poisonous ramifications into the
entire body politic.

The State legislations are almost the same and are
based upon the Central Bill of 1963. Their functioning
has highlighted some of the lacunas and weaknesses which
need consideration, not only of the states but of the
Centre also. In this chapter, it is proposed to deal with
the experience of State Lokayuktas and De-Lokayuktas.

The general scheme in different legislations is
that the Governor, by warrant under his hand and seal
shall appoint the Lokayukta after consultation with the
Chief Justice of the High Court and the leader of the
opposition in the legislative assembly or if there be no

5. Letter from the Additional Law Secretary to The Director,
Of Corruption Act, 1975; The Tamil Nadu Public Men
7. Ibid.
8. Ibid.
such leader, a person elected in this behalf by the members of the opposition in that House in such manner as the Speaker may direct and the Up-Lokayukta shall be appointed after consultation with the Lokayukta. In this general scheme, there are minor variations. The U.P. legislation provides that where the Speaker is satisfied that circumstances exist on account of which it is not practicable to consult the leader of the opposition, he may intimate the Governor the name of any other member of the opposition in the legislative assembly, who may be consulted instead of the leader of the opposition. In the Gujarati Lokpal and Lokayukta Bill, 1975, it was provided that the Lokpal may be appointed without consultation with the leader of opposition where an appointment is to be at a time when the legislative assembly has been dissolved or a proclamation under article 356 of the constitution is in operation. This particular situation has been overlooked by other legislations. It would be better if the appointment is made only when there is a regularly constituted legislative assembly. Both, the leader of the majority party and the leader of the opposition will be available for consultative process. The Gujarat Bill further provided that the Lokayuktas shall be appointed after consultation with the Lokpal and the Chief Justice of the High Court. In other state legislations, no consultation with the Chief Justice is provided in case of appointment of Up-Lokayuktas. This raises another question. Will it

9. Maharashtra Act, sec.3(1)(a); Rajasthan Act, sec.3(1)(a); Bihar Act, sec.3(1); Mad. Act, sec.3(1)(a); Tripura Act, sec.3(1)(a); Karnataka Ordinance, sec. 1.
10. Maharashtra Act, sec.3(1)(b); Rajasthan Act, sec.3(1)(b); Mad. Act, sec.3(1)(b); Tripura Act, sec.3(1)(b).
11. Ibid., sect. revised to sec.3(1)(b).
12. The Bill had provided for Lokpal and Lokayukta instead of Lokayukta and Up-Lokayukta.
14. Ibid., clause 3(1)(b).
also be necessary to consult the leader of the majority party as no appointment can be made by the Governor without the advice of the Council of Ministers. If the answer is in the affirmative, it is submitted that in that case, it would be appropriate to consult the leader of opposition parties also. There is no denying the fact that in the appointment of Lokayuktas, the Lokayukta must be consulted. It has been rightly emphasised by the first Lokayukta of Rajasthan, V. S. that the Lokayukta must be consulted on the very nature of things be a person or whom the Lokayukta can safely depend for satisfactory and smooth administration of the office.

The appointment of the first Lokayukta of Bihar has been a matter of controversy. The Lokayukta Ordinance was issued by the Governor on January 12, 1973. No action was taken to make the appointment under the ordinance. A Bill in terms of the ordinance was introduced in the Bihar Legislative Council on March 14, 1973. In April 3, 1973, the ordinance lapsed though the Bill was still pending for the consideration of the Council. Thereafter the second ordinance was issued on May 6, 1973. In Section 3 of the ordinance, it was provided that the appointment of the Lokayukta shall be made by the Governor after consultation with the Chief Justice and the leader of the opposition. The Chief Secretary to the Government of Bihar in his note of May 21, 1973 pointed out that the Governor can make the appointment...
appointment of the Lokayukta only after 'obtaining the opinion of the State Government.' Then the Governor sought the Chief Minister's consultation, he wrote back to him:

"In this connection I have already deliberated with you. In my opinion, it is not necessary to obtain the opinion of the Council of Ministers in this connection." 19

The Governor then made the appointment on May 26, 1973 20 after consulting the Chief Justice, the leader of the opposition and the leader of legislative assembly. 21 Some of the senior members of Mr. Kedari Chaffoor's ministry were unhappy over the appointment for it was reported that they wanted their 'yesman' to fill the post. 22 Their contention was that only the cabinet was constitutionally competent to appoint the Lokayukta. To support their contention, they pointed out that the appointments of Vice-Chancellors under the University Act and the nominations to the Legislative Council are made on the advice of the cabinet. 23 As the controversy was still brewing, the Kandey Governor bowed out of office. Many members of the outgoing ministry who were opposed to the appointment, again secured berths in the new cabinet of Mr. Kedari Chaffoor. In their effort to make the functioning of the Lokayukta difficult, his office was starved of funds, furniture and manpower. The idea was to humble and humiliate him so that

19. This note was appended as annexe 1 in the case of Ram Narain Sinha v. C.R. Chhotani, 1976 Patna 36 at p. 41.
20. Ibid.
21. The Governor issued the warrant of appointment of Mr. K. Chhotani as the Lokayukta of Bihar on 26th May, 1972, he took the oath of his office on 28th May, 1973 and the State Government notified the appointment in their notification No. 18/2-07/73 (Art) 23/73, dated 1st July, 1973.
22. Ibid.
23. Ibid.
he might resign voluntarily. Then the Lokayukta did not oblige them, the Chief Minister was sounded to bring up a resolution before the two Houses of the legislature to disapprove the Ordinance. This, the Chief Minister was not ready to carry out for the feared that it may touch off a constitutional crisis endangering his ministry. The matter was referred to the Advocate General who upheld the right of the cabinet to fill the post. The second Ordinance was allowed to lapse. The Governor took up the matter with the Union Home Ministry which directed the Union Government to issue a fresh ordinance with retrospective effect in order to avoid a break in the career of the present Lokayukta. The second ordinance was issued on October 3, 1973 and was given retrospective effect in order to cure the hiatus between 26th August and 3rd October, 1973. The third Lokayukta Bill was passed by both the Houses on December 11, 1973 and the President gave his approval on January 16, 1974. The legislation process which commenced in January, 1973 took a full year to be completed.

The controversy did not end here. A complaint was filed before the Lokayukta supported by affidavits against a member of the present ministry. Then the Minister was asked to explain his conduct, he through a letter pleaded with the Chief Minister and the Home Secretary that the Lokayukta should be asked not to proceed with the complaint against him as "we have not been on good terms for quite sometime." The Advocate General, to whom the matter was

24. Ibid.
25. It was published on 26th August, 1973.
26. Supra note 21.
27. It was published in the Bihar Gazette on 3rd October, 1973.
referred for opinion concurred with the views of the minister. When the Government was facing this dilemma, in August, 1974, three legislators challenged the appointment of the Lokayukta on the ground that the appointment had been made without any advice to the Governor by the Council of Ministers. Though the Lokayukta had been appointed in May, 1973 but his appointment was challenged after a lapse of over a year. In reply to the petition, the State in its affidavit before the High Court disclosed that there was no record in the Secretariat relating to any proposal for the appointment of the Lokayukta or for selection of any person to be appointed to the high office. The affidavit referred to several files of the personnel department and cabinet Secretariat to show that there was no discussion in the cabinet on the appointment of the Lokayukta and that it was done by the Governor without any advice being given by the Council of Ministers. The Centre was piqued at the affidavit filed by the State Government and it is reported that the Prime Minister asked for all the papers relating to the controversy. After a thorough discussion, it was agreed that the services of the Solicitor General would be placed at the disposal of the Bihar Government to help it to arrange a better defence of its case.

Dismissing the petition, the High Court laid down that the appointment of the Lokayukta as envisaged in Section 3 has to be made by the Governor with the aid and advice of the Council of Ministers and Article 163(3) of the Constitution prohibits inquiry in respect of:

30. Ibid.
33. *Supra* note 13, p. 44.
(a) whether any advice was given to the Governor by the Council of Ministers and (b) if an advice was given what was the advice. In view of the constitutional bar, the court held that it cannot inquire into the factual position, whether actually any advice was given or not. So the appointment of the Lokayukta was upheld. After the dismissal of the petition, a leading newspaper in the country commented that it is extraordinary that instead of seeking to have the honour of the Ministers vindicated by a proper inquiry, attempts should have been made to subvert the very concept of a Lokayukta. It added that now the legality of the appointment has been put beyond doubt, the Lokayukta must get on with the investigations without hindrance and the State Government should extend every co-operation. The Bihar situation was curious. Having appointed the Lokayukta, then to put a gillotine on him by the dubious process of not extending the legislation and by taking up the stand that the appointment had been made without the advice of the Council of Ministers was a clear exhibition of the fact as to with what contempt he was being treated. In order to avoid the re-occurrence of a situation like the present one, it would be better to make the legislations explicit about the consultation with Chief Ministers.

34. Id., p. 45.
35. This judgement has been commented upon in an earlier chapter: The Indian Ombudsman - The Lokpal Bills - A Comparative Evaluation.
the Lokayuktas may issue to the Up-Lokayuktas such general or special directions as they may consider necessary. It is further clarified in the proviso that the Lokayuktas cannot question any finding, conclusion or recommendation of the Up-Lokayuktas. The specific exclusion is that the Lokayuktas cannot question the findings, conclusions or recommendations of the Up-Lokayuktas. This has been made keeping in view the fact that the areas have been demarcated for the Lokayuktas and Up-Lokayuktas to carry out investigations. It is reasonable that the findings, conclusions and recommendations of one should not be open to question by the other, otherwise their functioning would become difficult. Commenting on this provision, Lokayukta, Mr. L. D. Gua has observed:

"Needless to point out that the 'finding, conclusion or recommendation' .... must be held to mean the finding, conclusion or recommendation of an Up-Lokayukta recorded during the course and as a result of investigation held by him under the Act."\(^{39}\)

The Acts nowhere limits the scope of finding, conclusion or recommendation reached at after holding an investigation personally by the Up-Lokayukta. If the Up-Lokayukta directs any officer or agency to carry out investigation into a specific matter and asks him to report back, on the basis of which the Up-Lokayukta draws out his findings and conclusions, can the Lokayukta question these as they have not been the result of an investigation carried out personally by the Up-Lokayukta? Mr. Gua's interpretation will permit the Lokayukta to do so. This certainly is not the import of the provision. There is no doubt that the

\(^{37}\) Maharashtra Act, Sec.3(3); Rajasthan Act, Sec.3(3); 
\(^{38}\) U.P. Act, Sec.3(3).
\(^{39}\) Section 7 of Maharashtra Act, Rajasthan Act and U.P. Act. 
\(^{39}\) Consolidated Annual Report, supra note 15, p.7 (Emphasis added).
Up-Lokayukta before finalising his conclusions has to apply his mind and exercise his own independent judgement on the points in issue to the best of his ability and knowledge but for this, it is not necessary that he must conduct the investigation himself. The State legislations do not envisage the application of the rule of 'one who hears must decide.' On the other hand, they specifically provide that the Lokayukta and/or an up-Lokayukta may, by a general or special order direct that any powers conferred or duties imposed on him, except the power to make reports to the Governor may also be exercised by such of the officers, employees or agencies as may be specified in the order. What cannot be delegated is the power to make reports to the Governor only. Though this provision makes an exception only in case of reports to the Governors whereas it should have been with regard to the general power of making reports (since they make reports not only to the Governor but to the competent authorities also) but the fact still remains that they can delegate all other powers except the power to make reports. Once again, Dr. T.T. Dua has introduced here a limitation which is not provided in the legislation. He is of the view that neither the Lokayukta nor the Up-Lokayukta can confer by delegation the statutory power of judicial investigation on any other person or agency. He reminds that they have an obligation personally to discharge their statutory duty of conducting preliminary enquiry (if any) and investigation. He has even observed that any preliminary enquiry or investigation held by a person or agency other than the Lokayukta and

40. Ibid.
41. Maharashtra Act, Section 19; Rajasthan Act, Section 20; Bihar Act, Section 19; U.P. Act, Section 20; Orissa Act, Section 13 (certain exceptions to be noted); Karnataka Ordinance, Sec. 20.
the Up-Lokayukta, would seem to be contrary to and inconsistent with the provisions of the Act. This view cannot be substantiated on the basis of the legislation. The power of delegation has been specifically conferred both on Lokayuktas and Up-Lokayuktas. This will have an overall affect on the control exercised by the Lokayuktas on Up-Lokayuktas. The conclusion reached at by the Up-Lokayukta on the basis of the report of investigation submitted to him by the person to whom the power of investigation had been specifically delegated will be open to question by the Lokayukta. The law only contemplates administrative control of Lokayuktas on Up-Lokayuktas and not that the Lokayuktas can act as appellate authorities to find faults in the findings of Up-Lokayuktas. For the smooth functioning of these bodies, it is vital that no intrusion be made which is not warranted by law. The interpretation of Mr. Dua will cause one more problem. If the whole investigation is to be conducted by the Lokayukta or the Up-Lokayukta personally in each case, it will not be practicable for them to cope with the complaints. In the United Kingdom, the parliamentary commissioner deputes his staff to investigate and prepare the draft report which is subjected to a case conference and thereafter, the parliamentary commissioner prepares the final report. In the investigation process, the assistance of the staff is necessary.

The areas of investigation have been demarcated both for the Lokayuktas and Up-Lokayuktas. It is also provided that the Lokayuktas may, for reasons recorded in

43. Id., p.27.
writing, investigate any action which otherwise may be investigated by the Up-Lokayukta. This power can be exercised by the Lokayuktas whether or not a complaint has been made to the Lokayukta in respect of such actions. This empowers the Lokayuktas to investigate even those complaints which otherwise would fall within the purview of Up-Lokayuktas. For exercise of this power, the Lokayuktas are required to record their reasons. It is further provided that when there are two or more Up-Lokayuktas, the Lokayukta is empowered, by general or special order, to assign matters to be investigated by each of the Up-Lokayuktas. A proviso to this says that an investigation held by an Up-Lokayukta, would not be open to question merely on the ground that such investigation relates to a matter not assigned to him by an order made by the Lokayukta. It has been rightly observed by Mr. T.R. Jha in his report that this provision is meant to cure minor procedural infirmities or irregularities not affecting the jurisdiction. The irresistible conclusion of all these provisions is that the Up-Lokayuktas have to function under the over-all administrative control of Lokayuktas but they have no jurisdiction to question the findings, conclusions and recommendations of the Up-Lokayuktas.

45. Maharahstra Act, sec.7(3); Rajasthan Act; sec.7(3); UP Act, sec.7(3); Orissa Act; sec.7(3).
46. Maharahstra Act, sec.7(4); Rajasthan Act, sec.7(4); UP Act, sec.7(4); Orissa Act; sec.7(4).
47. Consolidated Annual report, supra note 15 at p.12.
attitude of the Lokayukta towards him. It was alleged that the Lokayukta had been appointed by the Governor against the wishes of the opposition. He was seeking certain privileges and facilities which the Up-Lokayukta thought would involve a heavy burden on the State. It was also reported that the Secretary to the Lokayukta has sought transfer on the ground that he could not pull on with the Lokayukta.\footnote{43}

The tussle started on the very first day of the Lokayukta's taking over. The Up-Lokayukta was serving as the Vigilance Commissioner before assuming the charge as Up-Lokayukta on 5th June, 1973. On 23rd August, 1973, when the Lokayukta took over, the Up-Lokayukta requested him to formally authorise him to continue to deal with the cases which were pending with him as Vigilance Commissioner. On cursory examination of the Act, the Lokayukta felt that there was nothing in the law which could authorise the Up-Lokayukta to continue to deal with those cases and informed him accordingly. The Lokayukta has recorded in his report that being dissatisfied with the opinion expressed by him, the Up-Lokayukta decided on his own responsibility to continue to deal with those cases and if necessary, he would independently approach the Government to give him the necessary power retrospectively by amending the Act by means of an Ordinance. On the other hand, the Up-Lokayukta has explained his difficulty in his first consolidated annual report.\footnote{50} According to him, 1399 complaints were pending with the Vigilance Commissioner, involving 453 gazetted officials apart from an almost equal

\footnote{43, \textit{Times of India}, Bombay, 10.2.1974.} \footnote{49, \textit{Consolidated annual report}, supra note 15 at p.21.} \footnote{50, \textit{Consolidated annual report} of the Up-Lokayukta (Chintan K. Menon) pertaining to the period from June 5, 1973 to March 31, 1974.}
number of non-gazetted officers, on the day he took over. Investigations had made substantial progress and even
prima facie cases had been made out in several cases against
a number of public servants. The Up-Lokayukta recorded that
almost immediately on his taking over, he took up the
issue with the Government and subsequently with the Lokayukta
after his taking over. The Lokayukta was of the view that
it was for the Government to consider and decide whether any
changes were necessary in the law or not and we have not
been called upon to make any suggestions. The Government
would not have been aware of this problem unless it was
brought to their notice; therefore the Up-Lokayukta placed
the entire matter together with his detailed suggestions
for amending the law before the Chief Minister through a
letter dated the 7th January, 1974, making it clear that
these proposals represented the personal views of the
Up-Lokayukta and not of the Lokayukta. Meanwhile, in view
of the repeated and strong views expressed by the Lokayukta,
the Up-Lokayukta stopped dealing further with those
pending cases from January, 1974.51

This resulted in strained relations between the
two functionaries. There was a lacuna in law, since
the Vigilance Commissioner was to be the first Up-Lokayukta,
some provision should have been made in the Act to deal with
the pending cases. The course adopted by the Lokayukta
was not reasonable. In view of the fact that there was
no specific bar to deal with those cases, the Lokayukta
should have permitted the Up-Lokayukta to deal with those
cases and referred the matter to the Government for the
introduction of the necessary changes in the legislation.
There would have been nothing wrong in bringing the
difficulty of pending cases to the notice of the Government.

51. Id., pp.46-47.
Another development has been recorded by the Lokayukta which led to further deterioration of their relations. On taking over, the 'P-Lokayukta on June 6, 1973 secured the sanction of the Government for invoking Section 14(3) of the Act to utilise the services of the staff of the erstwhile Vigilance commissioner for the purpose of conducting investigations under the Act. This staff was all along utilised for administering the sachivalaya (office) and not for the purpose of conducting investigations as provided under Section 14(3). Till the time the Lokayukta was appointed, the Jp-Lokayukta was to be the sole judicial authority of the sachivalaya considered in all respects with full control over the staff. The day the Lokayukta took over, the 'P-Lokayukta represented to him that he was better acquainted with the character, quality, efficiency and behaviour of all the employees, having seen their work, both as Vigilance commissioner and as 'P-Lokayukta and he should be authorised to exercise full control and power over the members of the staff for the purpose of their retention in this sachivalaya or otherwise. The Lokayukta acceded to this request, leaving the matter entirely to his discretion. On 29th August, 1973, the 'P-Lokayukta communicated to the Chief Secretary, the discussion that had taken place with the Lokayukta along with a list of the staff of the erstwhile Vigilance commissioner consisting of 23 members, out of which 21 were stated to be acceptable for being absorbed in the Lokayukta sachivalaya on deputation and 7 'unacceptable'. This according to the Lokayukta caused discontent and dissatisfaction in large part of the staff. In view of the situation, the

Lokayukta withdrew the power which had been delegated by him, sometime in second half of January, 1974. The Up-Lokayukta stopped attending the office with effect from January 23, 1974 and continued to do so till May 1, 1974 when he proceeded on privilege leave for three months. The Lokayukta has made a passing reference to another matter which has a direct bearing on the Sachivalaya. He has reported that after he took over, only those letters used to be placed before him which were specifically addressed to him. But he was unaware of any other letter. In the first week of January, 1974, the then Secretary of the Sachivalaya went on leave from 5th to 27th January, 1974. During this period, the Deputy Secretary officiated as Secretary. He sought directions from the Lokayukta as to whether the entire work of the Sachivalaya should be brought to his notice or whether it should be directly placed before the Up-Lokayukta and thereafter dealt with by the office. It was also brought to the notice of the Lokayukta that till then all the work of the Sachivalaya used to be placed by the Secretary before the Up-Lokayukta. On inquiry, the Up-Lokayukta admitted that it was so and explained that it had happened just 'incidentally' and was not a result of deliberate planning. This disclosure by the Deputy Secretary rendered him persona-non-grata with the Up-Lokayukta. The Up-Lokayukta directed that the Deputy Secretary should not deal with his cases, when the Chief Secretary was apprised of the whole matter, he offered to withdraw the secretary and to make available the services of a new secretary. The new secretary took over on 21st January, 1974 and the Lokayukta has reported that since then, there is a welcome change in the atmosphere of the Sachivalaya. 54 The Up-Lokayukta resigned from his office on May 21, 1974. 55

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55. The Up-Lokayukta resigned from his office on 21st May, 1974. His resignation was accepted by the Governor with effect from 25th June, 1974.
This incident reads like a complaint from a Lokayukta against the Up-Lokayukta. The Up-Lokayukta has not explained the position in his report. From the facts delineated above, it can be inferred that there was much to be desired from the manner in which the Up-Lokayukta discharged his duties and powers. The sanction of the Government to use the staff of the erstwhile office of Vigilance Commission was for the limited purpose: to conduct investigations alone. The staff could not be used for daily administration of the Sachivalaya. After having sought the delegation of power to deal with the staff from the Lokayukta, the manner in which the Up-Lokayukta proceeded to deal with the staff was not of the kind which could inspire confidence. It is the Lokayukta who has to look after the smooth functioning of the Sachivalaya. Mr. I.D. Dua is justified when he says:

"... much needed (and expected) helpful co-operation in administering, controlling and building up this Sachivalaya, as a high powered organisation for conducting investigations in accordance with the basic scheme of the Act, was not forthcoming from the quarters most needed and expected. This naturally hampered the difficult task of building up one sound and healthy lines this prestigious institution....."56

The Lokayuktas and Up-Lokayuktas can be removed by the Governor on the ground of misbehaviour or incapacity and on no other ground. But before doing so, certain safeguards have been provided. An inquiry is required to

be conducted as contemplated in clause 2 of Art. 311 of the Constitution. In respect of Lokayukta, the inquiry shall be held by a person appointed by the Governor who is or has been a Judge of the Supreme Court or a Chief Justice of a High Court and in case of Up-Lokayukta by a person who is or has been a Judge of the Supreme Court or of a High Court. The report of inquiry is to be submitted to the Governor who shall cause it to be laid before each House of the State legislature. Thereafter, unless an address by each House of the State legislature supported by a majority of the total membership of that House and a majority of not less than two-thirds of the members of that House present and voting has been presented to the Governor in the same session, the Governor shall not remove him. This provision is in consonance with article 124(4) of the Constitution of India which applies to the Judges of the Supreme Court and also to the Judges of the High Court, by virtue of Article 217(1)(b). The provision relating to the removal of Lokayuktas and Up-Lokayuktas reflects the anxiety of the legislatures to guarantee in unequivocal terms, the security of tenure in the same way as is done in case of the Judges of the Supreme Court and High Courts. The Orissa legislation is different in two ways than the other legislations in the matter of removal of Lokayuktas and Up-Lokayuktas. It provides that the inquiry shall be conducted by a Judge of the Supreme Court or of a High Court other than the High Court of Orissa, thereafter, the report is not required by the Governor to be laid before the legislature but he is required in case of the Lokpal to consult the Chief Justice of the High Court of Orissa and the leader of opposition in the State legislature and in case of Lokayukta, the Lokpal before

57. Maharashtra Act, Section 6; Rajasthan Act, Sec.6; Bihar Act, Sec.6; J.P. Act, Sec.6. 53. Orissa Act, Sec.6.
passing an order of removal. This once again, leaves
the matter open as to whether the Chief Minister who
heads the Council of Ministers will also be required
to be consulted or not and if yes, in that case if his
advise to the Governor is contrary to that of the
Chief Justice and the leader of opposition, will it still
be binding or not? Similarly, in case of the Lokayukta,
consultation with the Lokpal alone is provided but will
it still be necessary to consult the Chief Minister? And
if his advise is binding on the Governor, it would be
virtually meaningless to provide consultation with the
Lokpal. Since the Lokayuktas and Up-Lokayuktas are
required to conduct probes into the actions of the
executive authorities including Ministers, it would be
advisable if they be not subjected to this executive
control. The report should be required to be laid before
the legislature for purposes of passing the necessary resoluti

There are two categories of State legislations.
The first category consists of those statutes which are
modelled on the Lokpal and the Lokayukta Bill, 1963. Under
these statutes, a person can complain both about
"grievances" and "allegations." Consequently, through the
instrumentality of Lokayuktas and Up-Lokayuktas, corruption
and maladministration in the government can be exposed.
These statutes have been enacted in the States of Orissa,59
Maharastra,60 Bihar 61 and Uttar Pradeshe.62

The second category of legislation has been enacted
in the State of Rajasthan where the Lokayukta and Up-Lokayuktas
can only investigate 'allegations.'63 Their task is to

59. id., Sec.7(1).
60. Maharatra Act, Sec.7(1).
61. Bihar Act, Sec.7(1).
62. U.P. Act, Sec.7(1).
63. Rajasthan Act, Sec.7(1).
expose corruption and not to deal with maladministration.

The states which have provided both for Lokayuktas and Up-Lokayuktas have also demarcated matters which may be investigated by the Lokayuktas and Up-Lokayuktas. The States of Maharashtra, Rajasthan, Uttar Pradesh and Orissa have authorised the Lokayuktas to investigate any action which is taken by or with the general or specific approval of Ministers or Secretaries, or Presidents and Vice Presidents of Panchayat Samitis or Presidents and Vice Presidents of Municipal Councils or any other public servant who may be so notified by the State Government in consultation with the Lokayukta. The remaining public servants have been put under the scrutiny of the Up-Lokayuktas. The Bihar Lokayukta has a wide area to investigate covering Ministers, Secretaries and other public servants since there is no provision for Up-Lokayuktas. In none of these State legislations, the expression 'Minister' includes the Chief Minister. This exclusion has been patterned on the central exclusion of the Prime Minister under the Bill of 1971. The Gujarat Bill had included the Chief Minister. The issue of Chief Ministers has been separately examined in an earlier chapter.

64. Maharashtra Act, Sec. 7(1); Rajasthan Act, Sec. 7(1); Uttar Pradesh, Sec. 7(1); Orissa Act, Sec. 7(1).
65. Id., Section 7(2) of each legislation.
66. Bihar Act, Sec. 7.
67. Maharashtra Act, Sec. 2(h); Rajasthan Act, Sec. 2(f); Bihar Act, Sec. 2(c); U.P. Act, Sec. 2(g); Orissa Act, Sec. 2(h).
68. The Lokpal and Lokayuktas Bill, 1971, cl.2(h).
69. The Gujarat Lokpal and Lokayukta Bill, 1975, cl.2(f).
70. Chapter Four, pp.235-43.
The Lokayuktas and Up-Lokayuktas have been in operation for sometime now. Some of their reports are available. Statistical details are given in Tables A to D. An examination of these reports will be useful in order to study the functioning of these State bodies.

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72. In case of Maharashtra, first three annual reports covering a period from October, 1972 to October, 1975 are available. 4th and the subsequent reports are still to be placed before the legislature. This information was supplied by the Lower Secretary, Government of Maharashtra vide his letter No: MIS-1030/1134/97, dated July 2, 1990;

In case of Bihar also, first three annual reports 1973-74, 1974-75; 1975-76 are available. Thereafter, the annual reports are yet to be submitted to the legislature. This information is based upon the letter of Mr. Yogamand Jha, Deputy Secretary to Lokayukta Bihar (No. 9/Lok (P.S)) No 95/76-4634/Lok dated June 16, 1990.

Same is the position in case of Rajasthan. First three annual reports from August, 1973 to March, 1976 are available. The fourth and fifth reports have not yet been published. This position was informed by Deputy Secretary to Government of Rajasthan vide his letter No: F.6(6)Karn/V-111/70, dated July 2, 1990.

There are two reports available in case of Karnataka, first one covering the period from September 14, 1977 to Dec. 31, 1979 and the second one from Jan. 1, 1979 to Dec. 31, 1979.
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<tbody>
<tr>
<td>1972-73:</td>
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<table>
<thead>
<tr>
<th>Maharashtra Report-II</th>
<th>Complaints Received: 764</th>
<th>Complaints dealt with: 744</th>
<th>Filed for different reasons: Without jurisdiction: 96 Other Reasons*: 201</th>
<th>Grievances Redressed: 265</th>
<th>Reports on Allegations: 7</th>
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<tbody>
<tr>
<td>1973-74:</td>
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<tbody>
<tr>
<td>1974-75:</td>
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</table>

*Other reasons include: Fault of complainant, Too vague, nonmous, Withdrawn by complainant, Complaints not filed properly, Lokayukta refused to investigate.
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<tbody>
<tr>
<td>Bihar</td>
<td>Without Jurisdiction: 110</td>
<td>Other Reasons: 291</td>
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<tr>
<td>Bihar</td>
<td>Without Jurisdiction: 329</td>
<td>Other Reasons: 515</td>
<td></td>
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<tbody>
<tr>
<td>Bihar</td>
<td>Without Jurisdiction: 390</td>
<td>Other Reasons: 1393</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Other Reasons include: Complaints found false after preliminary hearing, wrong address or found to be anonymous, referred to other departments, complaints considered trivial.*
<table>
<thead>
<tr>
<th>State</th>
<th>Report</th>
<th>Complaints Received</th>
<th>Complaints Dealt with</th>
<th>Reasons Filed for Different Reasons</th>
<th>Pending Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rajasthan</td>
<td>Report-I</td>
<td>396</td>
<td>396</td>
<td>Without Jurisdiction: 6</td>
<td>17</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Other Reasons: 1363</td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Report-II</td>
<td>1193</td>
<td>1193</td>
<td>Without Jurisdiction: 260</td>
<td>145</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Other Reasons: 773</td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>Report-III</td>
<td>1246</td>
<td>1246</td>
<td>Without Jurisdiction: 195</td>
<td>365</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Other Reasons: 636</td>
<td></td>
</tr>
<tr>
<td>Rajasthan</td>
<td>U-K-Lokayukta</td>
<td>1596</td>
<td>1212</td>
<td>Filed for Various Reasons: 166</td>
<td>99</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>After Preliminary Enquiry: 11</td>
<td></td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Referred to Commissioner of Pub. Grievances: 236</td>
<td></td>
</tr>
</tbody>
</table>

*Other Reasons Include: Copies of complaints addressed to other authorities, Anonymous, Other Remedies, Vague, No affidavit filed, Referred to U-Lokayukta.
### Table D: 'Uttar Pradesh'

<table>
<thead>
<tr>
<th>Report</th>
<th>Complaints Received</th>
<th>Complaints Filed for Different Reasons</th>
<th>Out of Jurisdiction or Baseless Complaints:</th>
<th>After Preliminary Inquiry Found Baseless or Settled at the Deptt. Level:</th>
<th>Grievances Redressed:</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.P. Report-II 1979:</td>
<td>95 (on prescribed form) 3 (of the previous year) 1955 (on plain paper)</td>
<td>103</td>
<td>73</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

*Note: The table outlines the number of complaints received, filed, and dealt with, and the outcomes of the preliminary inquiries and grievances redressed for different years in Uttar Pradesh.*
The reason for such large number of complaints being outside the jurisdiction as disclosed in the reports is that a number of 'exclusions' and 'limitations' on the jurisdiction of lokayuktas and 'Up-lokayuktas have been provided. Reading of section 3 along with schedule Three of Maharashtra, Bihar and U.P. legislations (which are more or less the same) will make it clear as to what has been put beyond their investigating jurisdiction. Now these exclusions and limitations have hampered the operation of these functionaries has been brought out in the Reports of Lokayuktas and 'Up-lokayuktas:

1. 'Grievances' against corporations cannot be investigated but complaints relating to 'allegations' can be by the 'Up-lokayuktas. The substantial difference between an allegation and a grievance is that in case of a grievance, the complainant must have himself sustained some injury or hardship whereas in case of an allegation, no personal injury need be there. The first annual report of Maharashtra points out that the citizens being not so public minded, they are not likely to bring 'allegations' against the corporations unless they have personally suffered. Complaints of personal suffering cannot be examined because of the specific bar. It is illustrated by the fact that the 'Up-lokayuktas had not received any complaint involving allegation against the corporations except one. All complaints involving grievances will have to be dismissed irrespective of the merits on this technical ground alone.

73, Maharashtra Report-I, p.5; Maharashtra Report- I, p.3-4; Maharashtra Report-III, p.6-7.
74. Section 3(3) of the Maharashtra Act.
75, Maharashtra Report-I, p.6.
76. Id., p.7.
The police has been given almost complete immunity from the jurisdiction of the Lokayukta and the Upa-Lokayukta. This is because of the fact that actions taken 'for the purpose of investigating crime' or 'to determine whether a matter shall go to a court or not' have been excluded from their jurisdiction. The principal function of the police being the investigation of crimes and that being the main source of grievances, so the police in a way has been placed 'outside' their jurisdiction. Even after the investigation, if the police does not take any action, such grievances cannot be investigated as it is the sole right of the police to determine whether the matter should go to the court or not? Still more drastic is the definition of the word 'action' which includes even 'failure to act.' This has been described as the top joke of the Act! So inaction provides a full cover to the police. It has been pointed out by the Maharashtra Lokayukta that it is difficult to see in what case the Lokayukta can proceed to investigate any complaint against police officers. The record of the first report of Maharashtra shows that the maximum number of complaints (101) were received against the police department and yet the Lokayukta found himself helpless in view of the exclusions.

77. Maharashtra Act, Section 3(1)(a) read with (a) and (b) of the Third Schedule; Bihar Act, Section 3(1)(a) read with (b) and (c) of the Third Schedule; J.P. Act, Sec.3(1)(b)(i) read with (a) and (b) of the Third Schedule; Orissa Act, Sec.3(1)(a) read with (c) and (d) of the third schedule.
73. Maharashtra Act, Sec.2(a); Bihar Act, Sec.2(a); Rajasthan Act, Sec.2(a); J.P. Act, Sec.2(a); Orissa Act, Sec.2(a).
80. Id., p.1.
Another area which has been excluded from the jurisdiction of the Lokayukta is pertaining to actions taken in respect of appointments, removal, pay, discipline, superannuation or other matters relating to conditions of service of public servants. This is an area in which there are large number of complaints. The fact is substantiated by the Reports of Maharashtra, Rajasthan, Bihar and others. Lokayuktas. The Lokayukta of Maharashtra has listed 27 complaints in Annexure 'A' to his first report about appointments, conditions of service, termination of service, removal and dismissal which he could not investigate because of the legal bar. Similarly, the Second Report of the Rajasthan Lokayukta singles out 136 complaints which were received from public servants containing grievances or allegations pertaining to their service which had to be filed 'as being incompetent'. The Lokayukta has observed that 'a helpful source of exposure of corruption has thus been outlawed.' The position of Bihar is also no different. Out of a total of 409 complaints in the first year, 110 could not be enquired because they related to such an area of public servants which was beyond the investigating jurisdiction of the Lokayukta. In the second year, this number increased

91. Maharashtra Act, Section 3(1)(a) read with cl.(d) of Schedule Three; Bihar Act, Section 3(1)(a) read with cl.(e) of Schedule Three; Jharkhand Act, Sec.3(1)(b)(i) read with cl.(d) of Schedule Three; Orissa Act, Sec.3(1)(a) read with cl.(f) of Schedule Three.
In view of the facts stated above, it is necessary that by an amendment in the State legislations, public servants be permitted to ventilate their grievances, if not allegations emanating from the treatment meted out to them during their service career for the aftermath of the service career is already within their jurisdiction. It is difficult to subscribe to the view expressed by the Lokayukta of Maharashtra that the claims which arise on retirement, removal or termination of service are 'hardly of any use.' His own second report records that the experience of the past two years has brought to light a large number of cases where extraordinary delays have taken place in the payment of pensions and retirement benefits and sometimes even arrears of pay. It is here that the Lokayukta is required to play his role by getting these fringe benefits of retirement expedited. It is acknowledged that the delay is of such magnitude that often the poor employee concerned has no pension and nothing to live on for as long as three to five years after he has retired. It is one area where this institution can prove very 'helpful.'

(iv) The jurisdiction of the Lokayukta and Up-Lokayukta is also excluded if the complainant has or had any remedy by way of proceedings before any tribunal or court of law. The practical difficulty arising out of this exclusion deserves serious consideration.

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90. Supra note 31.
92. Maharashtra Report II, p.3.
93. Ibid.
94. Maharashtra Act, Sec.3(1)(b); Bihar Act, Sec.3(1)(b); U.P. Act, Sec.3(1)(b)(ii); Orissa Act, Sec.3(1)(b).
The difficulty has been illustrated by the Lokayukta of Maharashtra by making a reference to the Prevention of Corruption Act within the provisions of which almost every case of corruption can be fitted in. And so long as 'a remedy' is available, they cannot entertain a complaint. The Lokayukta has expressed that it is difficult to see, in which case in the matter of corruption the Lokayukta or Upa-Lokayukta have any jurisdiction at all. Referring to the proviso which authorises the Lokayukta to hold an investigation if he 'is satisfied that such person could not or cannot, for sufficient cause, have recourse to such remedy,' the Lokayukta finds that it is 'full of pitfalls' and 'more calculated to delay' than anything else. The Lokayukta points out that he will have to take some evidence before he can decide that there is sufficient cause and that will take time. Secondly, his finding on such a preliminary issue itself will be a nice handle to the person complained against to challenge it on any ground, however, flimsy and thus gain time. In the ultimate analysis, in the matter of corruption, the jurisdiction is so hedged in by limitations that it is practically ineffective.

(v) The demarcation of areas between the Lokayukta and the Up-Lokayukta has also caused concern. The Lokayuktas can look into the actions of Ministers, Secretaries and Heads of Pila Parishads, Anchayat Samitis and Municipal councils whereas the rest fall within the purview of the Up-Lokayukta. The following table will show the number of complaints falling within the jurisdiction of each one:

96. Ibid.
97. Ibid., pp.10-11.
### MAHARATRA

<table>
<thead>
<tr>
<th>Report</th>
<th>Lokayukta:</th>
<th>Up-Lokayukta:</th>
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<tbody>
<tr>
<td></td>
<td>Zila Parishads: 25.</td>
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<tr>
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<td><strong>75.</strong></td>
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<tr>
<td>Report-II 1973-74:</td>
<td>Ministers: 11.</td>
<td>639 (covering the rest of the categories of persons/depts.).</td>
</tr>
<tr>
<td></td>
<td>Secretaries: 14.</td>
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<tr>
<td></td>
<td>Zila Parishads: 17.</td>
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<tr>
<td></td>
<td>Panchayat Samitis: 9.</td>
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<tr>
<td></td>
<td><strong>75.</strong></td>
<td></td>
</tr>
<tr>
<td>Report-III 1974-75:</td>
<td>Ministers: 2.</td>
<td>834 (covering rest of the categories of persons/depts.).</td>
</tr>
<tr>
<td></td>
<td>Panchayat Samitis: 12.</td>
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<tr>
<td></td>
<td>Zila Parishads: 60.</td>
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<tr>
<td></td>
<td><strong>91.</strong></td>
<td></td>
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<tr>
<td><strong>PART-II</strong> 1974-75:</td>
<td>Ministers: 5.</td>
<td>1167 (covering rest of the categories of persons).</td>
</tr>
<tr>
<td></td>
<td>Pradhans of Panchayat Samitis: 2.</td>
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<tr>
<td></td>
<td>Chairman of Municipalities: 2.</td>
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<tr>
<td></td>
<td>Heads of departments: 7.</td>
<td><strong>16.</strong></td>
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</table>
The performance of the initial years shows the quantum of work falling within the jurisdiction of each of the two functionaries. On the basis of the first year report, the Lokayukta of Maharashtra has rightly expressed his fear that in future, it may lead to congestion of work with the Upa-Lokayukta and leave the Lokayukta without much work if the present trends are an index. Rajasthan position is still worse. It is true that the Lokayuktas can take up the cases from the file of the Upa-Lokayuktas. But, for this, each time he has to record his reasons. The better course will be if some re-adjustment is made in the categories of persons coming under the jurisdiction of each of them.

(vi) The definitions of 'Minister' and 'Secretary' have posed another jurisdictional problem. The definitions are not inclusive of Ex-Ministers and Ex-Secretaries. The law permits to bring complaints regarding allegations within three years in case of Maharashtra and five years in case of Rajasthan. In Bihar and Orissa from the time the matter is alleged to have taken place. By the time the complaint comes before the Lokayukta or he proceeds to investigate, the minister or the Secretary may have already resigned or retired. The Lokayukta of Maharashtra was faced with the problem of Ex-Secretaries in his second year of working. In two cases, the Secretary complained against had

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100. Rajasthan Act, Sec.2(h); Bihar Act, Sec.7(3); U.P. Act, Sec.7(3); Orissa Act, Sec.7(3).
101. Maharashtra Act, Sec.2(h); Rajasthan Act, Sec.2(b); Bihar Act, Sec.2(h); U.P. Act, Sec.2(g); Orissa Act, Sec.2(b).
102. Maharashtra Act, Sec.2(1); Rajasthan Act, Sec.2(4); Bihar Act, Sec.2(4); U.P. Act, Sec.2(4); Orissa Act, Sec.2(4)(e).
103. Maharashtra Act, Sec.3(5)(b).
104. Rajasthan Act, Sec.3(3).
105. Bihar Act, Sec.3(4)(b).
106. U.P. Act, Sec.3(4)(b).
107. Orissa Act, Sec.3(4)(b).
retired and the allegations were such which would justify an investigation but the question arose, whether any action could be taken against him because he was no longer the Secretary and he would be outside the jurisdiction of the Lokayukta. The difficulty came much more to the surface in the third year of the Lokayukta of Maharashtra. Cases against 5 ministers and 3 Secretaries simply proved infructuous and had to be filed because in the reshuffle of the cabinet, the ministers ceased to be ministers and the Secretaries concerned retired. The suggestion of the Lokayukta that the definitions should be modified to include ex-minister and ex-secretary deserves immediate favourable consideration.

These various issues of jurisdiction dealt above are indicative of the fact that the exercise or the refusal to exercise the jurisdiction by these two bodies can lead to jurisdictional disputes. Legislations of States of Maharashtra, Rajasthan, Bihar, Orissa provide:

"No proceedings of the Lokayukta or the Pa-Lokayuktas shall be held bad for want of form and except on the ground of jurisdiction, no proceedings or decision of the Lokayukta or the Pa-Lokayuktas shall be liable to be challenged, reviewed, quashed or called in question in any Court."

Therefore, it is clear that questions regarding jurisdiction can be agitated in the courts. The Maharashtra Lokayukta has shown foresight by clearly bringing out the possible

103. Maharashtra Report-11, p.4.
110. Maharashtra Report-11, p.4-5.
111. Maharashtra Act, Sec.16(2).
112. Rajasthan Act, Sec.17(2).
113. Bihar Act, Sec.16(2).
114. Od. Act, Sec.17(2).
115. Orissa Act, Sec.16(2).
may wish to delay the proceedings and go either to the High Court by way of a writ or may file a suit before a subordinate court (which may go on for several years) raising some question of jurisdiction. Similarly, the complainant may, just to keep the complaint hanging over the head of the public servant, take similar action saying that the Lokayukta or "p-Lokayukta had jurisdiction and has not exercised it in his favour." The Lokayukta has suggested a shorter and speedier remedy that a provision should be made whereby the Lokayukta is permitted to make a reference to the High Court of any disputed question of jurisdiction. This is a wholesome suggestion which needs to be considered by the States already having this institution or contemplating to have it.

The Rajasthan legislation besides being confined to allegations is different from other legislations in matters of exclusions and limitations of jurisdiction. It has provided no exclusions by way of Schedule and there is no bar even if any other remedy is available to the complainant. One of the other points of difference which have been pointed out by the Lokayukta of Maharashtra in his first report are:

(a) The definition of 'grievance' as given in Sec.2(d) of the Maharashtra Act has been omitted in the Rajasthan Act and thereby the distinction sought to be drawn in the Maharashtra Act between an allegation and a grievance has been abolished as unnecessary. This is not the real import of

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117. Id., p.3.
the Rajasthan Act. No complaints concerning grievances can be taken up by the Rajasthan Lokayukta or the Up-Lokayukta. If the two provisions, Sec.2(b) of the Maharashtra Act and Sec.2(b) of the Rajasthan Act, defining 'allegation' are compared, they are verbatim the same which means that 'allegation' does not include 'grievances'. The fact is that the Rajasthan Act is limited in scope than the Maharashtra Act. It is confined only to allegations and does not abolish the distinction between an allegation and a grievance.

(b) The second point made by the Lokayukta of Maharashtra is that there is no provision like Section 3(3) of the Maharashtra Act in the Rajasthan Act so that the bar imposed on the investigation of grievances in respect of persons in the service of local authorities, corporations, Govt. Companies and registered societies has been taken away. Even under the Maharashtra Act, complaints in the nature of allegations against the persons mentioned above can be investigated. The exclusion is only in regard to grievances. Now since the Rajasthan Act does not at all purport to deal with grievances, the question of the inclusion of a provision similar to Sec.3(3) of the Maharashtra Act obviously does not arise. The point would have been valid had the Rajasthan Act covered both allegations and grievances.

(c) The next point also has overlooked the basic distinction between the Maharashtra Act and the Rajasthan Act. It has been pointed out by the

119. Ibid.
Lokayukta of Maharashtra that there is no provision in the Rajasthan Act comparable to Section 3(5)(a), and the only limitation prescribed is by Section 9(3) of the Rajasthan Act. As the Rajasthan legislation only pertains to allegations, it had to provide 'cut off' period as regards allegations alone.

The scope of 'allegations' cannot be interpreted as inclusive of 'grievances' as would be clear from the definitions of the two expressions given in different state legislations. Since they cover two different aspects, one primarily dealing with complaints of corruption and the other dealing with maladministration, the scope and ambit of the two legislations is different. The Lokayukta's suggestion that similar amendments should be undertaken so far as the Maharashtra Act is concerned is not well founded. With the exclusion of 'grievances' from the Maharashtra Act, it would limit its scope. On the other hand, in fact, there is a case for Rajasthan to widen its scope and include grievances as well. Rajasthan is the solitary state at present where grievances have been kept outside the purview of their investigation. The experience of the functioning of these bodies has shown that jurisdictional clauses do need a reconsideration in order to prevent the practical problems.


Complaint is the basis on which the investigation is to proceed. The State legislations lay down certain

120. Ibid.
121. Maharashtra Act, Sec.2(b) and (d) read with cl.(g); Bihar Act, Sec.2(b) and (d) read with Cl.(f); "A" Act, Sec.2(b) and (d) read with Cl.(f); Orissa Act, Sec.2(b) and (d) read with Cl.(g).
requirements, so that the valid complaints may be entertained by the investigating authorities. How these requirements have been viewed by the Lokayuktas and Up-Lokayuktas have been indicated in their reports:

(a) The common feature of State legislations in this regard is that complaints of grievances can be made by the aggrieved person only unless he is dead or otherwise unable to act for himself in which case any person who in law represents his estate or who is authorised in this behalf can make the complaint. In case of allegations, any person other than a public servant can make a complaint. The Lokayukta of Rajasthan has reported that 136 complaints had been received from public servants during the period 1974-75 which had to be rejected since they are not entitled to complain. The Lokayukta of Bihar has recorded to inform that a suggestion had been made to him that a superior officer like the Secretary of a department or a Head of a department, should be permitted to file a complaint to the Lokayukta, concerning an allegation against another public servant subordinate to him. Over-ruuling the suggestion, the Lokayukta has argued that under the basic scheme of the Lokayukta legislation, the Lokayukta is an institution for providing redress to citizens against the administration and not for dealing with complaints of one Government servant against another. More than this, is the issue that if a superior officer is to be permitted, then why not the subordinate also for he may also be equally in a position to make certain exposures. And if this were to be allowed,

123. Maharasthra Act, Sec, 9(1); Rajasthan Act, Sec, 9(1); proviso is redundant since any person can make a complaint under clause 1 of Sec, 9; Bihar Act, Sec, 9(1); U.P. Act, Sec, 9(1); Orissa Act, Sec, 9(1).
126. Ibid.
the functioning of the government departments will be rendered difficult. The Lokayukta is justified in pointing out that in view of the existing provision in different legislations enabling the Government to refer any specific matter to the Lokayukta, there is no need to make any change.

(b) The second requirement of law in regard to complaints is that they shall be made in such form and shall be accompanied by such affidavits as may be prescribed. The form of complaints and affidavits have been prescribed under the rules enacted in exercise of the power delegated to the specific government. Inspite of this, the experience of the Lokayuktas has been as is evident from the table given below that a good number of complaints are received which are anonymous or pseudonymous.

<table>
<thead>
<tr>
<th>Report</th>
<th>Number of complaints</th>
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127. Maharashtra Act, Sec. 17; Rajasthan Act, Sec. 19; Bihar Act, Sec. 17; U.P. Act, Sec. 19; Orissa Act, Sec. 17.
129. Sec. 9(2) of Maharashtra Act, Rajasthan Act, Bihar Act, Orissa Act and U.P. Act.
130. The Bihar Lokayukta (Establishment and Investigation) Rules, 1974; Form A - Form of Complaint Petition, Form B - Affidavit; The U.P. Lokayukta and U.P.-Lokayuktas (Complaint) Rules, 1977.
The result is that the Lokayukta/Up-Lokayukta cannot proceed with such complaints since they cannot get the facts verified. Even otherwise, it is a dangerous proposition to proceed with the investigation on an anonymous complaint for it encourages any and everyone to level baseless allegations. The only use of such anonymous complaints can be that if the Lokayukta on the basis of what is disclosed is satisfied that the matter deserves further probe, he can initiate the investigation suo-moto which he is authorised to do so. More serious than this has been the problem that often the complainants give wrong addresses, are not ready to receive letters from the Lokayukta office and are not prepared to file affidavits. The Rajasthan Lokayukta has complained that in 197 out of 393 complaints, no affidavits were received in spite of reminders by registered post. The Bihar Lokayukta is more aggrieved in recording his own experience when he points out that a complaint was filed duly supported by an affidavit. When the investigation was started, attempts were made firstly to avoid appearance and thereafter to back out of the case.

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131. Maharashtra Act, Sec.10(1)(a); Rajasthan Act, Sec.10(1)(a); Bihar Act, Sec. 10(1)(a).
133. Rajasthan Lokayukta Report-11, p.3.
even by pleading that the alleged culprit should be forgiven. So it is not impossible to win over the complainants. In view of this non-serious, non-cooperative and non-participative attitude of the complainants, the Bihar Lokayukta is not in favour of any relaxation in regard to the form of complaints and the requirement of affidavits. Infact, this requirement has been more specifically incorporated in the U.P. legislation that every complaint shall be accompanied by not only his own affidavit in support thereof but also of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary, together with all documents in his possession or power pertaining to the accusation. It is true that this makes the task difficult for the complainant and may not be fully in consonance with the idea of the institution of Ombudsman but considering the conditions relevant in the Indian context, it is probably necessary to continue with these procedural requirements. This will not operate as an handicap to the complainants for in those cases where the Lokayukta finds that the complaint has not been filed in the form as required but otherwise it merits consideration, he can proceed with the matter of his own. The Maharashtra Act has provided a check under which a person who wilfully or maliciouly makes any false complaint shall, on conviction, be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. By way of safeguard, it is also provided that no court shall take cognizance of such offence except with the previous sanction of the Lokayukta. A provision of this nature

135. Ibid.
136. U.P. ct, Sec.9(2).
137. Maharashtra ct, Sec.9(4).
needs to be incorporated in other State legislations as well. The effect of it will be that unless the complainant has a genuine complaint, he will not otherwise come forward with a complaint. And if he still does, he will do it at his own risk. This provision should be incorporated with some modification for it does not say who should file the complaint i.e. whether the public servant concerned or some officer in the office of the Lokayukta. The Lokayukta of Maharashtra was specifically faced with this problem when the public servant concerned had applied to the Lokayukta for permission to prosecute the complainant who was an employee dismissed by him and who had made scurrilous allegations against the public servant concerned which had failed. The Lokayukta has desired that the legislative intent should be clarified. This is necessary in order to avoid any kind of doubt.

(c) The law has made a concession whereby the complaints from persons in police custody, or in a gaol or in any asylum or other place for insane persons are not necessarily required to be in the regular form as discussed above. Merely a letter from such a person can be treated as a complaint and the person in-charge of the place concerned is under a legal obligation to forward the letter to the addressee unopened and without delay. The reason for this facility is too obvious.

The Lokayukta of Rajasthan has desired that it must be kept in mind that the Lokayukta (achivalaya) is

139. Maharashtra Act, Sec. 9(3); Rajasthan Act, Sec. 9(3); Bihar Act, Sec.9(3); U.P. Act, Sec.9(6); Orissa Act, Sec.9(3)(4).
not intended to be equated with a police station which exists for maintaining peace and general law and order and therefore ready to move into action on having reason to suspect the commission of any offence etc. It is clear from this that the Lokayuktas and Up-Lokayuktas are required to sift out things with lot of care and caution. The complainants owe a duty not only to the party complained against so that he be not unnecessarily harassed but to the cause of justice also. The experience of Lokayuktas has established that if the institution is to be a success, the complainants must be prepared to take full personal responsibility for the truth and credibility of facts by stating them on oath or solemn affirmation. This only means that the information supplied is true to the best of his knowledge. Ultimately, the Lokayukta has to investigate the facts.

**INVESTIGATION OF COMPLAINTS:**

The investigation of complaints is an important function which the Lokayuktas and Up-Lokayuktas perform. The law contemplates two stages: The preliminary inquiry and the investigation. The second stage is dependent upon the first. If after the preliminary inquiry, the Lokayukta or the Up-Lokayukta is satisfied that there is no justification to proceed with the complaint, he may do so by recording reasons and communicating the same to the complainant and the public servant concerned. Otherwise, he will proceed with the investigation of the complaint.

**Preliminary Inquiry:** This is an inquiry to find out whether prima facie a case is made out for investigation or not. No specific procedure has been provided to be followed in

141. Ibid.
142. Maharashtra Act, Sec.10(1) and (5); Rajasthan Act, Sec.10(1) and (4); Bihar Act, Sec.10(1) and (5); U.P. Act, Sec.10(1) and (5).
conducting the preliminary inquiry. It is left to the Lokayukta and the Up-Lokayukta to decide what kind of an inquiry will be necessary. The Rajasthan Lokayukta is of the view that this inquiry is to be conducted personally by the Lokayukta or the Up-Lokayukta and cannot be delegated to any other person or agency. This view is not correct as submitted earlier. The Supreme Court in another context while dealing with a case where the Chief Justice of the High Court had the power to dismiss and before exercising that power, he asked another Judge to inquire into the matter and on the basis of the report submitted, took action, repelled the argument that the chief Justice was not competent to delegate to another Judge to make an inquiry into the charges. The Supreme Court observed:

"It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report .... That cannot be delegated except where the law specifically so provides is the ultimate responsibility for the exercise of such power."

The law does not intend that the preliminary inquiry or the investigation should be conducted by them personally. They are only authorised to seek the help of other officials but in the ultimate analysis, conclusions have to be their own.

Investigations: The procedure for conducting of investigations has been partially regulated under the different enactments and partially left upto them. The requirements provided are:

143. Rajasthan Lokayukta Report 1, p.15.
144. See, Bihar Report-12, p.72-73.
(1) Either of the two functionaries when proceeds to investigate the complaint is required to forward a copy of the complaint or if he is acting of his own, a statement of grounds therefor, to the public servant concerned and the competent authority concerned. The concerned public servant is to be afforded an opportunity to offer his comments on such complaint or statement. Every such investigation is to be conducted in private and in particular the identity of the complainant and of the public servant is not to be disclosed to the public or the press whether before, during or after the investigation. The only exception when the investigation can be conducted in public is when the investigation relates to a matter of definite public importance for which the functionary is to record reasons in writing. The identity cannot be disclosed to the public and the press. But in the process of investigation, the identity of the complainant will be known to the public servant and that of the both will come to the knowledge of the competent authority and thereafter, even to the knowledge of each house of legislature in the event of the submission of a special report. An important question on a point of order was raised in the Bihar legislative assembly as to what questions could be put about the Lokayukta inquiries keeping in view the bar imposed regarding the identity not to be disclosed. The Speaker gave his ruling saying:

146. Lahaulandra Act, sec.10; Rajasthan Act, sec.10; Bihar Act, sec.10; U.P. Act, sec. 10. (Emphasis added).

It will not be possible to disclose the name of .... the complainant or the impugned public servant. It is permissible only to disclose the subject matter of the investigation. Accordingly, assuming that some minister's conduct is under investigation, it will not be possible to disclose the name of the minister and the matter of the investigation cannot be the subject matter of discussion in the House.\textsuperscript{143}

It has been rightly ruled by the Speaker that pending proceedings before the Lokayukta should not be a matter of discussion in the House. The Lokayuktas and Deputy Lokayuktas in their reports have not been disclosing the identity of the parties keeping in view the legal obligation on them. But the point that arises here for consideration is that if the Lokayukta on a complaint investigates the actions of a minister and submits a report, special or annual without disclosing the identity of the minister, when the report is brought before the House, will it not be necessary for the chief minister to disclose the identity of the minister concerned? It cannot be the intention of the legislation that the House is not to be informed about it even if informing the House means that it becomes public for otherwise, the whole exercise is meaningless. The Maharashtrian Lokayukta has expressed his difficulty that we cannot mention the facts of any case where a secretary or a minister is involved for the simple reason that it would always be possible to identify the individual if we mention the facts of the case and say that a secretary or minister was involved.\textsuperscript{149} The names of the ministers who have been investigated by the Lokayuktas have been appearing in the press from time to time.\textsuperscript{150} The bar should only be

\textsuperscript{143} \textit{Id., p.92.}
\textsuperscript{149} \textit{Maharashtra Report-III, p.5.}
During the course of the investigation and not after it is over. 

'During the investigation', it is necessary because otherwise, particularly in case of Ministers, it can become a matter of public controversy which under all circumstances needs to be avoided. It is possible that after the investigation, the Minister concerned may be exonerated. The damage caused to him will be irreparable if full secrecy was not maintained. But once the investigation is over, there would be no justification to keep it secretive in either case, whether the findings are for or against. The very knowledge that his wrong actions will be made public, will act as a deterrent against corrupt officials or politicians. For the maintenance of secrecy, the Lokayukta of Bihar has recommended that a provision similar to that of Sec. 21 of New Zealand 'Ombudsman Act, 1975 should be provided so that the staff of the Lokayukta is under an oath of secrecy not to divulge any information received by them except for the purpose of giving effect to the provisions of law. 

This is necessary to effectively carry out the functioning of the institution.

(ii) In order to enable the Lokayuktas and 'U'-Lokayuktas to carry out investigations fully, they are authorised to make orders for the safe custody of documents, to require public servants or other persons to furnish information or produce documents, to exercise powers of a civil court to summon witnesses, production of documents, receiving evidence or affidavits, requisitioning of public records and issuing of commissions for the examination of witnesses or documents. The above mentioned powers have been subjected 

151. This has also been stressed upon by the Maharastrian Lokayukta, see Maharastra Report-III, p.6.

152. Bihar Act, Sec.10(1)(c).

153. Maharastra Act, Sec.10(1)(c); Rajasthan Act, Sec.10(1)(c);

Bihar Act, Sec.10(1)(c); U.P. Act, Sec.10(1)(c).
to two limitations. No information shall be given to which may prejudice the security or defence or international relations of India or the investigation or detection of crime or which may involve the disclosure of proceedings of the Cabinet or any committee thereof. And in this regard the certificate issued by the Chief Secretary shall be binding and conclusive. The other limitation has been incorporated keeping in view the protection provided in Article 20(3) of the Constitution that no person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before a court. The scheme in this regard of the Lokayukta legislations has been to authorise them in a substantial manner to collect evidence so that their investigations are not hampered. But more than the specific authorisations, what is essential is the cooperation of the various governmental authorities. The functioning of the Lokayuktas has clearly indicated that this cooperation is not extended as it has been brought out in their reports:

(a) The Rajasthan Lokayukta has complained in his second Report that the communications from his Sachivalaya are not promptly dealt with. He has gone on record to say:

"In fact, in some cases, surprisingly enough, communications from his Sachivalaya were stated even to have been misplaced in the receiving Departments. This reflected a lamentable state of affairs and I had, politely, to warn them against such inefficiency."

154. 'No person accused of an offence shall be compelled to be a witness against himself.'
This is a clear example of constructive non-cooperation on the part of Government Departments which has retarded the speedy disposal of cases. The experience of Bihar Lokayukta is no different. On the initiation of the Lokayukta, the State Government issued a circular\textsuperscript{157} to Secretaries and Heads of Departments directing them to promptly attend to the Lokayukta communications, to ensure that the documents are made available within a period of 3 to 15 days (depending upon whose custody the documents are) and to see that the documents are accompanied with a carefully prepared list of the papers under despatch. The Lokayukta has reported that in majority of the cases, the instructions are not being complied with.\textsuperscript{158} The same difficulty has been expressed by the Maharashtra Lokayukta.\textsuperscript{159} Without the requisite help of the Government Departments, the Lokayuktas will not be able to play their role.

(b) The Lokayuktas have greatly felt handicapped without an investigating agency of their own.\textsuperscript{160} They are dependent upon the agencies of the Government and this dependence is proving suicidal. The Lokayukta of Maharashtra has reported that in important cases especially against a Minister, investigation is either not been made or is inordinately delayed.\textsuperscript{161} In a complaint against a Minister, the Lokayukta had referred it to the Director, Anti-corruption Bureau on 29th November, 1972 and till the time (Nov.17, 1973) the Lokayukta had gone to record his annual report, despite number of reminders, the report had not been received.\textsuperscript{162}

\textsuperscript{157} Circular No.\textsuperscript{CH}/12-019/74-507, dated 19.7.74 reproduced in Bihar Report-\textsuperscript{II}, pp.53-61.
\textsuperscript{158} Bihar Report-\textsuperscript{II}, p.62.
\textsuperscript{159} Maharashtra Report-\textsuperscript{III}, p.8.
\textsuperscript{160} See, Maharashtra Report-\textsuperscript{I}, pp.11-13, Bihar Report-\textsuperscript{II}, p.59.
\textsuperscript{161} Maharashtra Report-\textsuperscript{I}, p.11.
\textsuperscript{162} Ibid, pp.11-12.
After the submission of the annual report, the Director sent a report expressing his unsolicited opinion that the Minister was not guilty. The Lokayukta also requested the Central Government to permit him occasionally to utilise the services of their Central Bureau of Investigation Cell at Bombay but Government declined on the ground that their officers were already overworked. The Government agencies cannot possibly render the service needed by the Lokayukta as an impartial body. In the case of State of U.P., Government permission is required before starting investigation into important matters. There is an urgent, serious need for the Lokayuktas to have their own investigating agencies so that they are able to carry their investigations objectively and with speed too.

Lokayukta Reports:
The Lokayuktas and the Up-Lokayuktas communicate their results of investigations through reports which are made from time to time. The law requires that if after investigation of a complaint involving a grievance, he is satisfied that injustice or undue hardship had been caused to the complainant, then he shall make a report recommending to the public servant and the competent authority concerned that such injustice or undue hardship should be remedied in such manner and within such time as is specified in the report. And the competent authority is required to intimate the action taken for compliance with the report within one month of the expiry of the time stipulated. In case of allegations, on satisfaction of their substance, the functionary is to make a report to the competent authority communicating his

163. Bhanot, supra note 79-A.
findings and recommendations along with relevant documents, materials and other evidence and the concerned authority is to intimate within three months of the receipt of the report, the action taken or proposed to be taken. If with the intimation, the Lokayukta or the Up-Lokayukta is satisfied, he shall close the case but where he is not satisfied, he can make a special report to the Governor. Besides this, he is required to present annually a consolidated report on the performance of his functions to the Governor. Both, in case of special and annual reports, the Governor is to get them laid before each House of the legislature together with an explanatory memorandum. The scheme of reports is an evidence of the fact that the conclusions of the Lokayukta and Up-Lokayukta are essentially advisory or recommendatory in nature and the sanction behind them is the view taken by the competent authority or in the last resort, by the State legislature. In the context of these provisions, it would be useful to peruse the reports made by the Lokayuktas in order to assess the contribution made by them.

The break-up of the statistics given in Tables A-D earlier will show that the input of complaints has been substantial. The Bihar Lokayukta had to ask even for the assistance of a Up-Lokayukta in order to deal with large number of complaints. The Lokayuktas have been filing 90 to 95 per cent of these complaints as without jurisdiction or for other reasons. So much so, the Lokayukta of U.P. who has been receiving complaints on plain paper, has been supplying the prescribed form with the advice to submit them after completion. There has been hardly any response.

166. Sec. 12 of Maharashtra Act, Rajasthan Act, Bihar Act and U.P. Act.
After eliminating those complaints which are filed by
the Lokayuktas, one is left with a small number of them
and it is because of this reason that 'grievances' or
'allegations' have been found only in few cases. The
Lokayukta of Maharashtra has worked out that after excluding
categories of 'no jurisdiction', 'anonymous or pseudonymous'
and 'defaults of complainants', the institution has been able
to provide relief in 34 percent of effective complaints.\footnote{170}
This percentage compares favourably with ombudsman results
in other systems.\footnote{171} The main contribution of the Lokayuktas
of Maharashtra, Rajasthan and Bihar has been in effectively
dealing with the day to day cases of ensuring early payment
of pension and retirement benefits and sometimes even arrears
of pay.\footnote{172} The Lokayuktas have been able to help vast number
of persons and to some extent even in settling the tone for
settlement of their benefits in time.\footnote{173} There have been
good number of cases where on the intervention of the
Lokayukta or the Up-Lokayukta the grievances were redressed
without having to take up formal investigation.\footnote{174} The
Lokayukta of Maharashtra has reported that in 14 cases,
suggestions of general nature and in 23 cases, recommendations
of a particular nature had been made to the Government and
most of these suggestions or recommendations had been readily
accepted and carried out by the Government.\footnote{175} The Bihar
Lokayukta's first report is an important document. It
contains number of recommendations in the form of codes of
conduct for Ministers,\footnote{176} Legislators and Government

\footnotetext[170]{Maharashtra Report-77, p.13.}
\footnotetext[171]{Ibid.}
\footnotetext[172]{See Maharashtra Report-77, pp.3-10, for specific
cases refer Enclosure 5 to the report; Rajasthan
Lokayukta Report-77, p.17; Bihar Report-7, p.6; 
Maharashtra Report-77, pp.67-69.}
\footnotetext[173]{Ibid.}
\footnotetext[174]{Maharashtra Report-77, Enclosures 2 and 3; 
Maharashtra Report-77, Enclosure-1.}
\footnotetext[175]{Maharashtra Report-77, p.3 and Enclosure-1.}
\footnotetext[176]{Bihar Report-7, pp.11-12.}
\footnotetext[177]{Ibid., pp.13-15.}
servants, the implementation of them can have a real healthy effect on the functioning of State Governments. It also lays down for the consideration of the Government number of points regarding how supervision and control should be exercised on Government Departments. It has laid stress that for a sound democratic administration, it is absolutely desirable that every department of Government should submit a comprehensive and accurate report explaining its working during the financial year, preceding the budget session of the legislature. It has highlighted that Government has been appointing Commissions of Inquiry and Committees to look into specific problems but their recommendations have not been attended for years together. It has been pointed out that they need a reasonably quick examination of the Government so that full benefit of their reports may be derived. Such suggestions of independent bodies like the Lokayukta can help the government in having self-interrogation and thereby introducing the necessary changes which in the long run can go a long way in controlling mal-administration in different areas. The Lokayuktas can bring to the notice of the Government the areas which deserve their special attention. The auditors in other systems have been successfully playing this role.

In the area of allegations also, some contribution has been made. The second report from Maharashtra has listed seven cases involving ten public servants where investigations were made and the findings and the recommendations of the 'pa-Lokayukta were communicated to the Secretaries of the

178. Id., pp. 15-17.
180. Id., pp. 22-23.
181. Id., p. 73.
Government Departments and copies were also sent to the Chief Secretary to the Government for taking necessary action. Wherever a complaint indicated the symptoms of a malady which could be widespread in the administrative camps, besides recommending specific disciplinary action on the particular allegations, recommendations have also been made by way of prophylaxis to streamline administrative procedures and provide for administrative safeguards to eliminate possibilities of malpractices and generally to improve the tone of the administration.\(^{132}\) These recommendations were well received by the Government and instructions have been issued to streamline the administrative procedures.\(^{133}\)

The Malady of Ministers

The charges of corruption and of malafide actions are often levelled against persons occupying political positions. Many a time, these charges are baseless but unless they are thoroughly probed into, they do leave an impression on public mind. How far the Lokayuktas have been able to provide the outlet in the states? On the one hand, when the Minister concerned was too sure of his bonafides, he himself has offered to be inquired into by the Lokayukta,\(^{134}\) and on the other hand, there are instances where Lokayukta inquiries have been opposed tooth and nail by the Ministers. The fact of the matter is that

\(^{133}\) Maharashtra Report-III, Enclosure 3.
\(^{134}\) Shri Ram Naresh Yadav, Chief Minister of ?., threw challenge to the opposition to lodge a complaint with the Lokayukta if they have evidence, Times of India, ?, Delhi, 27.4.73; when charges were levelled against Shri R. Antulay, Minister for Buildings and Communications in Bombay, he requested the Governor to refer them to the Lokayukta, Virhu, 12.6.1975.
the Lokayuktas have been faced with opposition before, during and after the investigation of the actions of Ministers. It would be relevant here to make a reference to some of these situations:

(i) The Lokayukta of Bihar received a complaint, supported by affidavits involving two members of the Abdul Chafeeh Ministry including Finance Minister Sarega Prasad Roy in the alleged agricultural pumping set scandal in which sub-standard sets worth about Rs.6 crores were purchased. When Mr. Roy came to know of it, he wrote to the Chief Minister suggesting that he should request the Lokayukta not to proceed with private affidavits filed against him on the ground that 'we have not been on good terms for quite sometime.' The Chief Minister forwarded the letter to the Lokayukta who informed back that he was unable to accept his request since the points made out in the letter had no basis. The Minister then sought the opinion of the Advocate-General who upheld his contention.

In the meantime, the Lokayukta had issued a show cause notice which he refused the notice, it was sent ultimately to the Chief Minister. A few days after the notice was served, three members of legislative assembly filed a writ before the High Court challenging the appointment of the Lokayukta. When this writ was dismissed, the Minister filed another writ alleging bias and, therefore, the conducting of inquiry by him will be against the principles of natural justice. This was dismissed in limine. The Supreme Court stayed the proceedings before the Lokayukta. This is how the Lokayukta could not enquire into the allegations against

Speaking about the long experience of Ombudsmen in Sweden, Mr. T.J. Lundvik informs that there has been only one incident when a Minister tried to induce an Ombudsman not to investigate the case and he was not successful in his abortive attempt.

(ii) Equally difficult is the conducting of investigations against the Ministers. The state investigatory agencies do not co-operate. The experience of the Tokayukta of Maharashtra has been that in important cases especially against Ministers, either the investigation is not made or is inordinately delayed. This makes the going of the Tokayukta almost impossible.

(iii) There has been a very poor response from the State Chief Ministers in regard to the functioning of Tokayuktas. On the occasion of the presentation of the first annual report of the Tokayukta of Bihar in the legislative assembly, Chief Minister A. K. Sahoore is reported to have said, 'Personally I feel that this sovereign House has parted with its sovereignty by creating the institution of Tokayukta and arming it with powers to inquire into the conduct of its members, including Ministers.' He warned the other States against having this institution on the ground that the future generation will curse them for having committed this blunder. This thesis of Mr. Sahoore failed to elicit even a lone voice in its favour. So much so, the Deputy Speaker who was in the chair pulled him up and told him that he has not been called to express his personal views, that he should not treat the House as a forum to give vent to his personal likes and dislikes and that he is supposed to speak on behalf of the Government.

139. Maharashtra Report-1, p.11-12.
190. "J. Thakur, "Tokayukta under Duress"'
ease, the Lokayukta found that with the support extended by two ministers, someone improperly obtained a licence to shift a rice hulkar. The Lokayukta pointed out that the grant of the licence was malafide besides being illegal. The finding of the Lokayukta was that the order had been obtained by influencing one Minister through his Co-Minister who was anxious to please the person concerned as the election was impending. This report was made to the Chief Minister Dr. S.B. Chavan on July 1, 1976, recommending only the cancellation of the licence. After nearly six months of the report, the Secretary to the Chief Minister wrote a brief letter to the Registrar in the office of the Lokayukta raising legal issues to the proposed action. There was complete silence on the facts. The Lokayukta replied firmly:

It is quite clear to me that whoever advised the writing of that letter has not read my findings at all.

Then the new Chief Minister, Mr. Jaswant Rai Bhatia, took over; the Lokayukta called on him and impressed upon him to take some decision on the report. In August 5, 1977, the report was placed before the House. The Chief Minister made a strong criticism. He stated that the Lokayukta was 'been that people in the deal should be punished.' This created a suspicion in his mind, got the matter examined and found that the conclusions of the Lokayukta were the result of his 'anger' and 'vengeance' against them. The Chief Minister said that the issues involved were 'insignificant' and wondered whether the government machinery and funds should be wasted on such a trifling matter. He emphasised that if the report of the Lokayukta was accepted, two political workers will be driven out from

political life. It was stressed by him that the functioning of democracy would come to an end and public life would be barren if the administration was run as suggested by the Lokayukta.\textsuperscript{194} This criticism of the Chief Minister was self-evident of the fact that he was more worried about the political career of two workers than the very institution which had been evolved to help democracy to function more effectively. This angry rebuttal of the Chief Minister had nothing to say on facts. It would have been understandable if certain points in the Lokayukta's report were challenged and refuted but to throw the whole report out on the ground of unpalatability did not befit a Government supposedly interested in a cleaner administration and public life.\textsuperscript{195}

The institution of Ombudsman has not been completely free from criticism from the Government in other countries. In Denmark, the Director-General of the State Railways had publicly refused to accept part of the Ombudsman's criticism.\textsuperscript{196} In Finland, in one of the cases, it was widely believed that the then Ombudsman was refused reappointment because of his opposition to the Government's handling of a railway strike.\textsuperscript{197} In the U.K., bias was alleged against the Parliamentary Commissioner because of his previous association with the Department concerned.\textsuperscript{198} The Ombudsman in Mauritius resigned because of his serious differences with the Government.\textsuperscript{199} The Minister refused to carry out the recommendation of the Ombudsman of Nova Scotia (Canada) to reinstate a truck driver.\textsuperscript{200} The reaction of the Ombudsman

\textsuperscript{194} Ibid.
\textsuperscript{195} See, Times of India, N. Delhi, 23.3.1977.
\textsuperscript{196} Landsdömmer N. T. Hansen, 'The Danish Ombudsman: Directives and Relation to Parliament (Folketinget)', 3 Cambrian Law Review, 43 at p,44(1972).
\textsuperscript{197} Donald G. Rowat, The Ombudsman Clan, 21(1973).
\textsuperscript{198} Frank Stacey, The Ombudsman Compared, 165(1973).
\textsuperscript{200} Dale M. Andrews, 'The Provincial Ombudsman Supervisors of Bureaucracy', pp.9-10 (This essay was made available by the library staff of Canada House in London).
was that the Minister has caused damage to the office that he was holding. One of the reports of the Ontario Ombudsman was labelled by the Minister concerned as biased, inaccurate and incomplete. After lot of unpleasantness, the Ombudsman resigned.

Some kind of conflicts, once in a while cannot be ruled out. But if they become frequent and party politics is mixed with the functioning of the institution, it would lose its sanctity and will not be able to function. Unless on facts, the Lokayukta is wrong, the Government should normally carry out the recommendations made in his report irrespective of the fact against whom the report has been made. This would help in enhancing the prestige of the Government. It is difficult to fathom, why a state should continue with the Lokayukta if its suggestions and recommendations have to be treated with contempt. Even reminders to take action on reports do not bring any results. The reports are allowed to stagnate and are placed before the House after long gaps. There is a need that a committee of the legislature should be assigned the task of examining the reports of the Lokayuktas and ensuring early presentation before the House. In fact, a provision should be enacted whereby it should be made incumbent upon the Government to bring the report before the legislative assembly within a period of three months of its submission.

201. Globe and Mail (Toronto), 12 (Nov.12, 1971).
204. Maharashtra Report-III, p.3.
205. Maharashtra Report-I was submitted on Nov.17, 1973, it was placed before the House on Dec.16, 1974; Maharashtra Report-II was submitted on Nov.30, 1974 and was placed before the House on March 3, 1975; Bihar Report-I was submitted on June 3, 1974, presented to the House on March 7, 1975; Rajasthan Report-I was submitted on July 17, 1974 and was laid before the House on March 31, 1975. See also, foot note 72.
207. See, Maharashtra Report-III, para 15, p.7. It has been suggested that a provision should be made to place the report within six months.
The State Tokayuktas and Up-Lokayuktas are still passing through their infancy. They have worked reasonably well particularly in dealing with grievances and they are making a way for themselves as regards allegations. But the fact cannot be overlooked that they are not a success as one would have expected. They have worked under inadequate jurisdiction and their reports have not received the treatment which should have been given to them. With the necessary changes as experience has shown, if introduced in the State legislations, they will be able to work well for an institution with too many reservations finds itself cramped and cannot play its role. The view that the whole idea of Lokayukta is moth eaten is an expression of open permission.

It has been reported by the Lokayukta that there is a tremendous upsurge of interest in his functions. Almost daily he has been asked for interviews by complainants or their representatives. In his first year of functioning, he granted interviews to 461 persons and a large number of them from the rural areas. After his second year of functioning, the same Lokayukta observed that his jurisdiction has proved to be very beneficient and will continue to grow in value and effect as time passes and the people get to know its proper ambit and efficacy. It has been observed that if the institution is fully organised and fully equipped, it can contribute in no mean degree, towards effectively checkmating, and substantially eliminating corruption and improper conduct from amongst public services.

It takes time to get used to the institution like the Lokayukta but once it gets into the system, then alone its

full value is appreciated. No one in power likes review of one's actions. But the value of review cannot be underestimated. The Lokayukta review will provide sustenance to democracy. The working of Lokayuktas has shown that they have not faced constitutional problems.

It is very much workable within our constitutional set up. What is needed is speedy removal of curbs and limitations on its jurisdiction and greater co-operation from the Ministers and the public services. This will help in developing sound Lokayukta Jurisprudence in India.