The institution of Ombudsman originated in 1309 and remained confined to Scandinavian countries till 1962. But from 1962 onwards, there has been wide Ombudsmanic activity. Ombudsman today is a 'household' word and is virtually an insignia of respectability. 'Ombudsmanship', a new kind of religion, has gripped the world. Ombudsman is now functioning in Common Law and non-common law, developed and developing countries at national, state and provincial levels. Universities, hospitals, corporations, newspaper companies have found the institution useful. The International Ombudsman Institute has already been set up.

2:1 ITS MEANING:

Ombudsman is a Swedish word. 'Ombud' means about, 'bud' means message, 'man' means person. Thus

3. This was the view expressed by Prof. J.F. Gamar of University of Nottingham, U.K. in a personal interview on 1st November, 1973.
7. The International Ombudsman Institute was set up in 1977 at Law Centre, University of Alberta, Edmonton, Alberta, Canada to co-ordinate research and documentation of Ombudsman functions and activities in their various forms on a worldwide basis.
it means a 'man with a message about something.' Its literal meaning is 'someone who represents somebody,' on behalf of man, an 'attorney,' a 'solicitor.' Ombudsman is an official to act as an independent legal arbitrator between the state and the private citizen. He is a 'legislative commissioner for the investigation of citizen's complaints.' Ombudsman is an office headed by an independent, high-level public official who is responsible to the legislature, who receives complaints from aggrieved persons against government agencies, officials and employees or who acts suo moto, and who has the power to investigate, recommend corrective action and issue reports. Ombudsman can be better described by different descriptive titles; citizen's champion, citizen's Defender, citizen's Guardian, Grievance man, Mediator, Supervisor and Inspector.

15. See, the International Bar Association Resolution adopted at its Vancouver meeting in August, 1974, See Bernard Frank, supra, note 1, p.2.
and the like. We acts as a lost Office to receive complaints, probes than and pleads accordingly. Infact, lawyers, diplomats and members of Parliament perform to some extent functions of an Ombudsman.\(^{19}\)

2:2: ITS ORIGIN:

Ombudsman originated during the 

\textit{laiseg faire}

period, still it was meant to deal with the problems of 'expanded bureaucracy in the modern welfare state.' \(^{20}\)

The need for it was felt in order to protect the citizens from 'undue interference, negligence or errors by government officials.' \(^{21}\) This is evident from the history of the origin of Ombudsman.

In the early years of Eighteenth Century, Sweden was at war with Russia. In 1709, King Charles XI of Sweden was defeated in the Battle of Poltava in Russia. He had to flee to Turkey. Meanwhile, there was unrest and disorder in Sweden. To stop this, the King from Turkey issued an order in 1713 for the creation of an office: \textit{Koningens högsta Ombudsmann} (King's highest Ombudsman, the Supreme procurator) and appointed one of his trusted councillor to this position. He was charged with the duty to ensure that laws and statutes were followed and that civil servants fulfilled their obligations. \(^{22}\) In grave matters, he was required to conduct the cases in court himself. By an additional order in 1719, the name of the office was changed to

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\(^{20}\) Ronald E. How, 'The spread of the Ombudsmo Idea' in Anderson, id., p.3.


\(^{22}\) Ulf Lundqvist, supra note 11, pp 1-2.
JurdttlekaKer (Chancellor of Justice) without any change in his duties. The office is popularly known as JK. JK being the servant and the agent of the king, was obliged to obey the Government. It was soon alleged that he was not sufficiently independent to be able to protect the citizens. For a brief interval from 1766 to 1772, he was no longer to be appointed by the King but by the then existing representative bodies: the four Estates. As a result of the coup d'etat in 1772, staged by King Gustavus III, once again the power came with the King. JK again became an official holding a post in the confidence of the King. For some years preceding 1809, JK also served as a Councillor and occupied a position somewhat similar to Minister of Justice. In 1809, an office which had been introduced as a temporary measure, ultimately came to stay as a permanent feature, the King's principal law officer.

In 1809, King Gustav IV Adolf, who had resided as an absolute despot, was dethroned. A parliamentary Committee was assigned the task of drafting a new Constitution and it performed its task in a span of few hectic weeks. The framers of the Constitution were influenced to a certain extent by the theories of Montesquieu. It was a step towards representative democracy. The Constitution provided for a division of State's authority between the King and the Estates.

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23. Even before 1713, both in Sweden and in Finland (which was linked with Sweden since the thirteenth century), there were offices which could be to a certain extent considered as predecessors to the Chancellor of Justice. The office was known as 'Crown Provost'. See, Sten Rudholm, 'Sweden's Guardians of the Law: The Chancellor of Justice' in Donald C. Bayst (ed.), The Ambudsman: Citizen's Defender, 17(1963).

which later became the Riksdag or Parliament. This was done in order to avoid that neither the monarch nor the Estates be in absolute position to wield power. The executive power was given to the King and Council, the exclusive authority to levy taxes was granted to the four Estates, the power of legislation was jointly entrusted to the King in Council and the Estates and the Judicial power was vested in independent courts. The constitution provided for two separate institutions, one old and the other new to exercise control over public offices and officials. The institution of the King was to continue to act on behalf of the King and Council, and the new institution Justice Ombudsman (JO) was to act as the attorney of Parliament, under the instruction issued by Parliament, and in that capacity to control the observance of laws and regulations in so far as these are applicable by persons subject to official responsibility, and to institute legal proceedings in the proper courts against those who have committed any violations of the law or neglected to perform their official duties because of partiality, respect of persons or any other reason. It is this JO, (Parliamentary Ombudsman) and not JK (Chancellor of Justice) which has assumed world-wide importance.

No authentic material is available as to how this idea of a Parliamentary Ombudsman was incorporated in the Swedish Constitution. It is not even known with whom the proposal originated. It is creditable, however,

25. Estates came to be known as Riksdag in 1866. See, Sten Rudholm, ibid.
27. Id., Article 96.
that it was introduced in spite of the opposition of the Government of that time.\textsuperscript{29} In the background of the Swedish history, the fathers of the Constitution wanted a kind of control that did not depend upon the whim of the Government and that is why they presented a 'grand and revolutionary'\textsuperscript{30} thought that the holder of the office should be that of the confidence of the Parliament and not of the Government. The intention is clear from the memorandum delivered to the Estates by the parliamentary Committee. It says:

"The Committee is convinced that a true public spirit will not be long in appearing in a nation, originally free and manly, which enjoys a freedom of the press protected by the sanctity of the constitution, in which public affairs are transacted and debated publically, in which public and individual rights are surveyed by a guardian, appointed by the representatives of the nation to watch over the observance of the laws by Judges and officials.\textsuperscript{31}

The details of the considerations underlying the office of Ombudsman are further fortified by the debates of the four Estates. In the House of Nobility, one member of the Committee argued:

\begin{quote}
"The risk of officials being prepared to disregard the people's rights in order to remain in favour with those in power was reduced if the officials were subject to control by means of a general freedom of press, and by a Commissioner appointed by Parliament.\textsuperscript{32}
\end{quote}

\textsuperscript{29} \textit{Ibid.}

\textsuperscript{30} \textit{Ibid.}

\textsuperscript{31} Miffred Bexelius, 'The Swedish "Ombudsman" Special Parliamentary Commissioner for the Judicial and the Civil Administration 1910-1960' in the proceedings of the subcommittee, \textit{supra} note 8, p. 112 at 113.

\textsuperscript{32} \textit{Ibid.}
In the Estate of Burgesses, another member of the Committee said:

'The Constitution proposed by the Committee would have been badly prepared if it had provided no control over the power of officials and Judges and if it had not protected the safety of the people against the weight of power as manifested in the manifold branches of administration and against the independence of the Judiciary.\(^{33}\)

It is, therefore, he added:

'The Committee considered a guardian of the observance of the law appointed by the people to be necessary not only for the safety of the people but also to create assurance among the people that they were in safety under the protection of the law.'\(^{34}\)

Thus, the 1909 Constitution made a major contribution by providing a 'watchman over the law's watchmen'\(^{35}\) in the office of the parliamentary Ombudsman.

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33. \(16^{13}\): ITS UNIQUENESS:

There is nothing complicated about this strange sounding and awkwardly pronounced institution, Ombudsman is a simple concept.\(^{38}\) It means that a citizen

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33. Id., at p 113-114
34. Id.
35. Walter Gellhorn, Ombudsman and others, Citizen's Protectors in nine countries, 195(1966).
aggrieved of an official's action or inaction should have some independent agency or functionary to whom he can easily lodge his complaint. Ombudsman is such a functionary. He acts as a means of control and at the same time is different from other controls.

Definitions of the institution of Ombudsman have not been attempted but its fundamental characteristics have been delineated by different writers. These are:

(a) It is an institution which is normally provided in the Constitution or by the legislature so that its existence is not dependent upon the executive fiat.

(b) Ombudsman is an officer of the legislature and not of the executive. He is appointed by the legislature, and he reports back to the legislature about his work.

(c) He is an impartial investigator and is politically independent, even of the legislature. Operationally, he is independent of both the legislature and the executive, functionally, he is autonomous.

References:
41. Rowat, supra note 20, p.9.
42. American Bar Association Resolution, cited in Bernard Frank, supra note 1, Essential No. 3 at p.2.
43. Ibid, Essential No. 2 at p.2
44. Ibid, supra note 20, p.9
45. Hill, supra note 17.
46. Ibid.
Unlike the Courts, he has no right to quash or reverse a decision. He investigates the complaints and gets at the facts. If he finds a wrong has been done, he criticises it and makes a recommendation to rectify it. If he is not satisfied with the remedial action, he reports to the legislature. His main weapon is publicity through the legislature and the press. He has the power to investigate, criticize and publicize, but not to reverse, administrative action. He possesses 'influence' rather than 'power'.

Again unlike the courts, it is not necessary that a complaint in the form of petition must be filed with the Ombudsman and then only he will initiate his investigation. He can suo moto initiate the investigation, can take up cases based upon press reports, and thereby makes the institution easily accessible.

In the method of handling complaints also, the Ombudsman differs from the system of courts. Ombudsman investigations are direct, informal, speedy and cheap. What is required to initiate an investigation is to write a letter. Thereafter, no formal court like hearings are held, and the Ombudsman's work is done entirely by mail.

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48. Ibid.
49. Ibid.
52. J. D. Love, Report of the Committee on the
    concept of Ombudsman, Ottawa (Canada), 5 (July, 1977).
53. Rowat, supra note 20, p. 10.
54. Ibid.
So Ombudman is a unique complaints handling machine. Its most interesting puzzle is its apparent effectiveness despite minimal coercive capabilities. It should not be misunderstood that it is an alternative to law courts or tribunals. It has its own role to play as an independent institution. Ombudman is a crusader without a sword, a watchdog who only barks but does not bite, a powerful friend of the citizen but not anti-administration. It is meant to squeeze arrogance out of the government, not by command but by persuasion. This unique 'mechanism of democratic control' has played a useful role and gained wide acceptance. Through its post-decision-audit, it has been able to check bureaucratic abuses and has bolstered administrative morale by demonstrating that civil servants often have been unfairly accused. It has helped in humanizing relations between the public and the administration. It is submitted that it is a step forward in establishing an 'open-government', securing respect for the rule of law and in developing a more coherent body of administrative law. It has given rise to a 'new equity' jurisprudence which has great relevance particularly in the last quarter of the twentieth century.

214: ITS DEVELOPMENT IN SOME OF THE COUNTRIES:

(i) Sweden

Sweden started with an Ombudman in 1809 who was to supervise both civil and military authorities.

55. Hill, supra note 17.
57. Hill, supra note 17.
This arrangement continued up to 1915 when it was found necessary to separate the two jurisdictions and provided for two Ombudsmen to deal with the two different areas. Thereby, a separate Militiombudsmen (Military Ombudsman) was constituted. After the Second World War, the work load of the military Ombudsman got reduced whereas the work of the other Ombudsman increased. In 1969, the offices of the two Ombudsmen were amalgamated and a provision was made for a collegiate system of three Ombudsmen, each styled Justitieombudsmen, who were assigned to supervise different areas. Two Deputy Ombudsmen were also provided. After 1969, the work load of the Ombudsmen increased rather rapidly and it became once again necessary to reorganise the office of Ombudsman. The change was introduced in 1975 by the Riksdag (parliament) which became operative in May, 1976. At present, the office of parliamentary Ombudsman comprises of four Ombudsmen, all known as Justitieombudsmen. The system of Deputy Ombudsmen has been abolished. One of them is Administratief Chief of the office (Chief Ombudsman), who looks after the internal administration and decides the main orientation of activities within the office. All the four Ombudsmen have separate spheres of supervision.

(ii) Finland:

Prior to 1909, for almost seven hundred years, Finland was a part of the Kingdom of Sweden. In 1309, Finland ceded to Russia as a consequence of Napoleonic wars, but it was accorded the special status of Grand

60. The spheres are laid down in the work manual by the Chief Ombudsman after having consulted the other Ombudsmen. See, Ulf Lunævik, supra note 11, p.4.
Tuchy within the Russian Empire, with the autonomy of having its own laws and its own administration. The czar was to rule Finland not as an absolute monarch but as a constitutional Grand Duke. Some unsuccessful attempts were made to undermine the autonomy of Finland. Nevertheless, the essential features of the legal and governmental system of Finland were preserved until the October Revolution of 1917 in Russia. Thereafter, Finland emerged as an independent state. Despite the Russian era of over hundred years, it had no direct effect on the Finnish legal system.

The Constitution Act of 1919 declared Finland as a sovereign republic. This constitution provided for the office of ombudsman. The main factor responsible for its incorporation was that Sweden had already experienced with it for over a hundred years and Finland had very close association with Sweden. Finland was interested in making use of Swedish experience. Besides this, the Chancellor of Justice, the King's Ombudsman representing the executive had been functioning since 1713. After independence, the need was felt that there should be a representative of the Parliament to constantly watch the actions of the officials. This was met by providing for the 'supervising organ' of Parliament. To begin with,

the Constitution provided for a single Ombudsman. In 1971, the Constitution was amended to provide for an Assistant Ombudsman to assist the Ombudsman and to act for him in case of his disability. In addition, there is a Deputy to the Assistant Ombudsman who functions only in case of the Assistant Ombudsman's disability. 64

(iii) DENMARK: 65

Denmark has been governed under a democratic Constitution since 1949. The King is the nominal head of the executive. He has no personal responsibility. He performs the functions through Ministers responsible to the Parliament (Folketing) for the efficient administration of their departments. After the second world war, the functions of administrative authorities increased. It, therefore, became imperative to protect the reasonable interests of private individuals and at the same time make it possible for the administration to do its work efficiently. This problem arose in spite of the fact that the Danish Courts exercised considerable control and were not inhibited in criticizing the administration if need be. In this background, the problem was taken up by a parliamentary Committee set up in 1946 to consider amendments to the Constitution. One of the issues before the Committee was the adoption of Ombudsman. In spite of the opposition, the Committee decided in favour of the Ombudsman and the revised Danish Constitution of 1953 provided for the Ombudsman. 66

64. Ibid.
65. For details of the development of the institution in Denmark, see T. J. Løderman, 'Denmark's Ombudsman' in Kovat, supra note 23, pp. 75-77; Cellhorn, supra note 35, pp. 5-6.
66. Denmark Constitutional Act, 1953, Section 55.
The detailed rules were laid down in the Ombudsman Act of 1954 which were supplemented by Directives adopted by the Parliament in 1956. The first Ombudsman took office on April 1, 1955.

(iv) NORWAY:

Norway was the last Scandinavian country to adopt the Ombudsman. A military Ombudsman was operative in Norway since 1952. No special crisis drew attention to the desirability of matching the military Ombudsman with an Ombudsman to safeguard the citizenry against civil servants. The initiative to establish an Ombudsman for civil affairs was taken up by an Expert Commission on Administrative Procedure appointed by the King-in-Council to look into the question of more appropriate safeguards in public administration. The Commission published an extensive report in 1958 expressing desirability for the institution of Ombudsman and also included a Draft Bill for Ombudsman. In 1960, the Cabinet put forward a bill to create a Parliamentary Commission for civil administration. It was explained that the Ombudsman will provide quick, cheap redress for persons who are aggrieved by administrative actions and will at the same time protect public employees against quarrelsome persons. He might also lessen the burden of the Storting (Parliament), who now constantly get complaints from private persons concerning the activities of some administrative authority. The Bill did not come up for reading during the session of 1961, it being an year of Parliamentary elections.

67. The Danish term for Ombudsman is "Ombudsmann" and official name is Parliamentary Commissioner.
68. Callhom, supra note 35, p. 155.
69. Id., p. 156.
new Bill was introduced in 1962 which was unanimously passed and promulgated on June 22, 1962. In November, 1962, the Storting adopted the Instructions governing the Ombudsman activity. The first Norwegian Ombudsman started discharging his duties on January 1, 1963.

Thus the institution remained confined to these four Scandinavian countries from 1909 to 1962. The reasons for its confinement to a limited region could possibly be the geographical isolation and the language barrier. But this could not possibly be the explanation particularly for Denmark and Norway. It seems that the need for it was not felt until well after the second world war which led to the expansion of state activity and this fact focussed the attention on the institution for its rapid growth after 1962.

215: ITS ADOPTION IN COMMONWEALTH COUNTRIES

The Scandinavian experience had proved useful in ensuring clean administration. It also proved that the 'court therapy' was not necessarily the most effective remedy particularly to deal with maladministration. On the other hand, the experience was that the 'Ombudsman therapy' was a success with little or no side effects. It consequently led to the adoption of the institution outside the Scandinavian region.

70. Rowat, supra note 20, p. 15.
71. See, Reference Papers, Press Department, Royal Ministry of Foreign Affairs, Oslo, Norway, No 143, 1970, On p. 1, it says: The reason for the establishment of the Ombudsman system in Norway was: 'the steadily increasing influence of the public administration on the citizen's rights and obligations.'
New Zealand has been traditionally considered as a 'laboratory of democracy', setting with political experiments. One of these experiments in recent times has been with the institution of Ombudsman. It was, no doubt, a bold move to try with an institution which had remained confined so far to the non-English speaking world. It was more so when there were no scandals or maladministration which warranted the need for an Ombudsman. Stephen Hurwitz was the foremost 'international actor' in the adoption of the Danish Ombudsman in New Zealand. He introduced the idea of Ombudsman but the Labour Government in 1959 rejected it because of the comprehensive nature of existing methods available for the protection of the people. In November, 1960, the National Party which was in opposition and was to contest the general election issued a statement of policy which inter alia, said:

'To ensure that members of the public in dealing with Departments of State have the right and opportunity to obtain an independent review of administrative decisions, the National Party proposes to establish an appeal authority. Any person concerned in an administrative decision

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72 Hill, supra note 17, p.48.
73 Gellhorn, supra note 35, p. 103.
75 Hill, supra note 17, p.70.
may have the decision reviewed. The procedure will be simple. The appeal authority will be an independent person or persons responsible not to Government but to Parliament.

The National Party was returned to power and the Bill was introduced in August, 1961. No action was taken during that session of the House. It did not get a warm reception. It was termed as 'no-goodman.' The Bill was reintroduced in the June, 1962 session. Without much debate and any opposition, it was passed in September, 1962 as 'the Parliamentary Commissioner (Ombudsman) Act.'

Gellhorn has observed that this is rather 'unspectacular legislative history and makes clear that Ombudsman was created not to clean up a mess, but, rather, simply to provide insurance against future messes.' Thus, New Zealand Ombudsman became the first non-scandinavian and first anglo-Saxon Ombudsman. The 1962 Act has now been consolidated and amended by the Ombudsman Act, 1975.

The 1962 Act had provided for one Ombudsman. Over the years, the number of complaints increased. It was felt that one Ombudsman was not enough to handle so many complaints. The Act of 1975 introduced the collegiate system of Ombudsmen. It provided for several Ombudsmen, one of whom to be appointed as Chief Ombudsman who shall be responsible for the administration of the office and the co-ordination and allocation of the work.

77. Hill, supra note 17, p. 71.
78. Gellhorn, supra 35, p. 103.
80. In 1963, the number of complaints was 340. It increased to 1,107 in 1971; 1,135 in 1972 and 1,1246 in 1973. See, Yearly Reports of New Zealand Ombudsman.
between the Ombudsmen. This arrangement is almost similar to Swedish system and was introduced around the same time. At present, there is a Chief Ombudsman and two other Ombudsmen. The Chief and another Ombudsman are located in Wellington. Auckland has the third Ombudsman. This helps the general public for they have easy access to Ombudsman. In Sweden, all Ombudsmen are housed in the same building in Stockholm.

(ii) THE UNITED KINGDOM

The idea of Ombudsman in the United Kingdom was initiated round about the same time as in New Zealand but it took longer to mature. The Crichel Down affair of 1954 came to symbolise the abuse of administrative power and was an expression of bureaucratic arrogance in post war Britain. The Franks Committee appointed
as a sequel to this episode, could not look into the problems posed by the Crichel Down affair as they were not within the terms of reference of the Committee. In spite of the fact that the report of the Franks Committee had made a series of important recommendations, yet it made no proposals for considering complaints against the administration in cases where there was no statutory provision for a regular tribunal or inquiry. The Ombudsman idea was projected in the U.K. through academic writings published after the Frank’s Committee report. Professor F.H. Lawson submitted a memorandum advocating for Ombudsman to the Executive Committee of Justice at the end of 1957. This led to the formation of a committee under the Directorship of Sir John Hyatt.

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95. A committee was appointed on 1st November, 1955 with Sir Oliver Franks as Chairman to consider and make recommendations on:
(a) The constitution and working of tribunals other than the ordinary courts of law, constituted under any Act of Parliament by a Minister of the Crown or for the purposes of a Minister’s function,
(b) The working of such administrative procedures as include the holding of an enquiry or hearing by or on behalf of a Minister on an appeal or as the result of objections or representations, and in particular the procedure for the compulsory purchase of land.

Report of the Committee on Administrative Tribunals and Inquiries was submitted on 15th July, 1957, Cmd 219.

96. Id., pp.91-99. See Frank Stacey, supra, note 36, p.3.
to inquire into the adequacy of the existing means for investigating complaints against administrative acts or decisions of government and to consider possible improvement to such means, with particular reference to the institution of Ombudsman. The Report entitled as 'The Citizen and the Administration: The Redress of Grievances' was submitted in 1961 and has been acknowledged as 'one of the great non-State papers'. The Report asserted that it has carried on from where the Franks Report had left and in that context, advocated two major reforms. It proposed a large extension of the system of administrative tribunals to consider complaints against the discretionary actions of administrators and the establishment of the British equivalent to an Ombudsman, the Parliamentary Commissioner to investigate complaints of maladministration. It has been observed that this report marked an important stage in the transformation of the Scandinavian Ombudsman into something significantly different, and had great influence over the form in which an Ombudsman type institution was eventually established in Britain. Around the same time, when this Report was submitted, T.E. Utley's book 'Occasion for Ombudsman' appeared in which he argued that the conception of the Ombudsman is far more consistent with British practice than is the Conseil de Stat but he was not enamoured with the Scandinavian practice of giving

89. Frank Stacey, supra, note 36, p. 22.
93. T.E. Utley had been commissioned by the Society for Individual Freedom to write a book examining the possible relevance for Britain of the Danish institution of Ombudsman.
investigating functions to one man and suggested that in the British context a Committee of the House of Commons should take the place of the Ombudsman. Despite the fact that Hyatt Report was favourably received, the Macmillan Government on Nov. 8, 1962 flatly turned down all the proposals in the Report on the ground that already adequate provision was there under Constitutional and Parliamentary practice for the redress of any genuine complaint of maladministration and it would not be possible to reconcile the proposals with the principle of Ministerial responsibility to Parliament. This gave a temporary set back to Ombudsman. Interim affair enquiry of 1963 had many of the essential characteristics of the Ombudsman technique and helped in promoting the idea of an Ombudsman. Utley has observed that: 'There seems every reason for supposing that any political party which took this proposal (Ombudsman) up would acquire great merit in the eyes of the electorate'. The Conservative Government had already rejected the proposal. The Labour took it up for the 1964 General Elections. It provided in its manifesto that it has been resolved to minimise the whole administration of the State and to set up the new office of Parliamentary Commissioner with the right and duty to investigate and expose any misuse of government power as it affects the citizen. Utley’s prophecy came out to be true. The Labour Party was returned to power.

95. ibid, pp.139-141.
100. Supra, note 31, p.164.
in New Zealand, Ombudsman thus proved to be an 'election winning' item with the opposition parties. In October, 1965, a white paper: 'The Parliamentary Commissioner for Administration' was presented to the Parliament. The Bill was published on February 14, 1966. On 23rd February, the House was dissolved and fresh elections were ordered. The proposal was once again reiterated. This time, the Labour Party was returned with bigger majority. On 20th July, 1966, a new Bill received its first reading. When the Bill was still pending for consideration, the Prime Minister announced on August 4, 1966, in the House of Commons that Sir Edmund Compton had been appointed the Parliamentary Commissioner designate so that he is able to organise his office by the time the Bill becomes law. It was criticised as an interference with the freedom of Parliament by the opposition. During the second reading stage, Richard Crossman made a strong plea in favour of the independent investigator and Judge on the ground that it would investigate bias, neglect, inattention, delay, incompetence, iniquity, perversity, turpitude, arbitrariness on the part of the administration. The Bill was routed through a Standing Committee of the House of Commons and was passed with the pertinent statements one from Conservative member and the other from a Labour member. Aunin Hogg's conclusion was

102. The same happened in India, when the Janata Party pledged in its election manifesto to have 'Lokpal'. It was returned to power in March, 1977.
107. Id., col. 51.
that the Bill "is a noble facade without anything behind it" whereas Alexander Lyon thought that it would be churlish if "not to pay some tribute to the very fact that this Bill has been introduced and is being passed into law, because this Commissioner is the greatest aid to the liberty of the subject, in his relationships with the State, to have been provided since 1947, when the former Labour Government introduced the Crown Proceedings Act."

The Bill got the valediction from Lord Gardiner with a note of hope:

"While I do not know of any country which has a better Civil Service than we have, everything is always capable of improvement in administration and this step will also, I believe, have that effect."

The Bill finally received the assent of the Crown on 22nd March, 1967 and the Act came into force on 1 April, 1967.

UNITED KINGDOM - NORTHERN IRELAND:

Based upon the Parliamentary Commissioner Act, 1967, the office of Parliamentary Commissioner for Administration was also established in Northern Ireland under legislation in 1969, to investigate complaints alleging maladministration by Government Departments. To deal with the complaints of local authorities, the Commissioner for Complaints was also established under the Commissioner for Complaints Act (Northern Ireland) of 1969.

THE HEALTH SERVICE COMMISSIONER:

Having experimented with the Parliamentary Commissioner for Administration, the Health Government

109. Id., Col. 1451.
announced in February, 1972 its proposals for Health Service Commissioners and embodied them in The National Health Service (Scotland) Act, 1972, which provides for a Health Service Commissioner for Scotland and the National Health Service Reorganisation Act, 1973, which makes provision for England and Wales. The charge of these posts has so far been held by the Parliamentary Commissioner. The same man has been discharging the functions of the Parliamentary Commissioner and of Health Service Commissioners of England, Wales and Scotland. The view of the Government in this regard has been that the work of the Health Service Commissioner should be closely associated with that of the Parliamentary Commissioner. This arrangement has worked well for different reasons: (a) he can investigate a complaint in which both the Department and a health authorities are involved, and thus avoids overlapping; (b) as Parliamentary Commissioner, he had considerable staff to take care of the additional work; and (c) the experience which the Parliamentary Commissioner and his staff had already gained was highly relevant to their new role in looking at Health Service cases.

LOCAL COMMISSIONERS FOR ADMINISTRATION:

From health, the Ombudsman scheme was extended to local administration. The Local Commissioners for England and Wales were created by Local Government Act, 1974 and for Scotland by Local Government (Scotland) Act 1973.

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111. Gregory and Hutcheson, supra note 91, p.549.
112. For more details on Health Service Commissioners, see supra, pp.545-553.
114. Stacey, Id., 194.
115. Received Royal assent on February 3, 1974.
Act, 1975. 114 Part III of the Act of 1974 provides that there shall be a body of Commissioners known as the Commission for Local Administration in England, and a body of two or more Commissioners known as the Commission for Local Administration in Wales. The Parliamentary Commissioner is a member of each Commission; 115 he is not to investigate complaints but to advise generally and to work with local Commissioners on the investigation of complaints which involve both local authorities and the Central Government Department. 116 Three Commissioners for England and one for Wales are supervising the administration. 117

(iii) CANADA

The British North America Act of 1967 is the fundamental law of Canada. This Act provides for a federal set up with general characteristics of the Parliamentary system. After New Zealand adopted the Ombudsman scheme in 1962, a private member introduced a Bill in the House of Commons for a Parliamentary Commissioner. The Bill was not debated. Almost the same Bill was re-introduced in 1963 but it was disallowed at the second reading stage. It was again introduced in February, 1964. This time, it was taken up for consideration in the House. 113 By this time, a Royal Commission had also reported favourably on the idea of Ombudsman. 119 The Government referred the Bill to a

114. Received Royal assent in May, 1975.
115. Local Government Act, 1974, Sec. 23(1) and (2).
116. Id., Sec. 33.
Committee of the House of Commons. It recommended the Ombudsman scheme for the federal administration. Prime Minister Pearson announced that the idea would be referred to a new Royal Commission on Administrative Bodies. This Commission was not constituted. The matter continued to be discussed at different times and at different levels, without any outcome. In August, 1976, a Committee was constituted to consider this issue. The Committee submitted its report in 1977 recommending a Federal Ombudsman for Canada. In December, 1977, the Minister of Justice and Attorney-General of Canada announced, in the House, his intention of introducing legislation early in 1978 to establish a Federal Ombudsman in Canada. The Ombudsman Bill received its first reading on April 5, 1978. However, Canada is yet to have a Federal Ombudsman Proposal for a Federal Police

122. Ibid.
125. Ibid., p. 690.
126. See, Newsletter, International Ombudsman Institute, Law Centre, University of Alberta, Edmonton, Alberta, Canada, Feb. July and October, 1979; 5 Commonwealth Law Bulletin, (Jan., 1979); In these latest publications on the development of Ombudsman nothing has been reported regarding the progress of the Canadian Federal Ombudsman Bill which had been introduced in 1973.
Ombudsman is also under consideration. A language Ombudsman for federal government and an Ombudsman for federal prisons have been functioning since 1970 and 1973 respectively. Prof. Rowat and Llanbias had pointed out that it was very likely that first the Ombudsman will be established at the provincial level before it is adopted at the federal level in Canada. They had pointed out that one of the advantages of a federal system is that any new institution can first be experimented at a smaller scale and if it succeeds, it can be tried at the federal level. This has proved correct for already nine out of ten provinces of Canada, have Ombudsmen. Prof. Rowat who has successfully championed the cause of Ombudsman around the world, it is hoped, will be able to see it through soon at the federal level in his own country also.

(iv) AUSTRALIA: The Australian Constitution was enacted by the British Parliament and its text is contained in the Commonwealth of Australia Constitution Act, 1900.

128. Id., p. 2.
132. It received the royal assent on July 9, 1900 and came into effect by royal proclamation on 1st January, 1901.
It combines the British system of representative government with the American conception of federation. Commonwealth means the national authority as distinct from six states. Each State has its own Constitution. Commonwealth of Australia is made up of three arms of government: a bicameral legislature, an executive and a federal judiciary.

Australia like Canada has been trying to introduce Ombudsmen since 1962. The first Australian Ombudsman legislation was passed by Western Australia in 1971. It was followed by South Australia in 1972, Victoria in 1973, Queensland and New South Wales in 1974 and Tasmania in 1975.

At the federal level, the Ombudsman Bill was introduced on 6th March, 1975 in the Commonwealth Parliament but it lapsed when the Parliament was dissolved in November, 1975. It was reintroduced in June, 1976, was passed by both the Houses of Parliament and received assent on December 13, 1976. The appointment of the first Commonwealth Ombudsman was announced on March 17, 1977. Provision under the Act has also been made for the Deputy Commonwealth Ombudsman.

134. Id., p.2. Six states are: New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia.
136. Id., sec. 11.
137. Id., sec. 71.
139. The Parliamentary Commissioner, 86, 1971. It was assented to on December 27, 1971.
140. Newsletter, supra note 126, July, 1979, p.2.
141. Professor Jack Eadin Richardson, Professor of Law at the Australian National University, was appointed the first Australian Commonwealth Ombudsman.
142. Australia, Ombudsman Act 1976 (No.191 of 1976), Sec.4.
(v) SOME OTHER COMMONWEALTH COUNTRIES:

THAILAND: This was the first African country in the Commonwealth to adopt the Ombudsman system. In order to provide a safeguard against abuse of power,\(^{143}\) the interim Constitution of 1965 made a provision for a permanent Commission of Inquiry comprising of three persons. The Commission is supplemented by the provisions of the Permanent Commission of Inquiry Act, 1966. The membership of the commission was raised to five by a constitutional amendment in 1975.

GUATEMALA: In 1966, Guatemala attained independence as Guyana in 1966. The Guyana Independence Order, 1966 contains the Constitution\(^{144}\) which declares it to be a 'sovereign democratic state' and provides a chapter on fundamental rights and freedoms of the individual.\(^{145}\) It also introduces a parliamentary form of government with the cabinet to be collectively responsible to the parliament.\(^{146}\) Immediately preceding the Independence order, a team of the International Commission of Jurists had recommended that an office of Ombudsman to be set up\(^{147}\) and this recommendation was incorporated in the Constitution by having a separate part devoted to Ombudsman and ancillary matters.\(^{148}\) The first Ombudsman took office

\(^{144}\) The Guyana Independence Order, 1966, Schedule 2.
\(^{145}\) The Constitution of Guyana, Article 4.
\(^{146}\) Ida, Chapter II, Articles 3-20.
\(^{147}\) Ida, Article 35.
\(^{148}\) Supra note 143.
\(^{149}\) Supra note 145, Chapter V, Part 2, Articles 52-56.
\(^{150}\) Ida, Article 55.
in May, 1966. Supplementary provisions were provided through the Ombudsmen Act of 1967 which was amended in 1971 to extend its jurisdiction to the local government.

MAURITIUS: Mauritius, an island which remained under Britain since 1914, got its independence in 1968. The Mauritius Independence Order, 1969 sets up the same constitutional scheme as in case of Guyana. It provides a chapter on Ombudsman. This constitutional provision is based upon the Report of Prof. G. de Smith wherein he recommended that the Ombudsman will provide a link between the Government and the governed. In 1969, the Ombudsmen Act was enacted and the first Ombudsman took office on March 7, 1970.

FIJI: Fiji, another British colony attained its independence in 1970. Fiji's constitutional setup is very much similar to that of Guyana and Mauritius. Drawing upon the experience of these British colonies, the Constitution made provisions relating to the office of Ombudsman for it was felt that the establishment of Ombudsman will help the full development of democratic Government. Fiji enacted the Ombudsman Act in 1970 and the first appointment was made on 1st March, 1972.

153. I.d., sections 1, 3-19, 54.
154. I.d., Chapter IX, sections 96-102.
156. I.d., para 38.
158. I.d., chapter IX, sections 112-113.

PAINSTRENGUINE: The Constitution of the Republic of Trinidad and Tobago Act was passed by Parliament and assented to on March 29, 1976. It became effective from August 1. The Constitution provides for an Ombudsman to deal with faults in administration. The Ombudsman Act containing supplemental provisions was passed in 1977. The first Ombudsman took office on December 6, 1977.

JAMAICA: In 1973, the Ombudsman working party recommended that an Ombudsman be appointed. The Governor General in his speech of April 22, 1977 approved it. The Ombudsman Act, which came into force on Nov. 17, 1979, has been described as 'a new armoury of democracy' for it

162. *Ida*, p.15.
164. *Frank*, *supra* note 1, p. 15.
165. Headed by James K. Lloyd.
166. *Frank*, *supra* note 1, p.27.
purports to reinforce the existing machinery for the protection of the rights of the people. The first Ombudsman took over on December 19, 1973.

SRI LANKA: Constitution of Sri Lanka adopted on Sept. 7, 1973 imposes upon the parliament an obligation to enact a law for the establishment of the office of Parliamentary Commissioner for Administration. In pursuance of this constitutional provision, the Law Commission of Sri Lanka published in Dec., 1973 a working paper entitled 'Draft Ombudsman Bill and Report' and a 'Supplementary Report' in April, 1979. It is hoped that soon they would have an Ombudsman.

DOMINICA: Dominica's association with Britain dates from 1627 and became fully independent on Nov. 3, 1978. The Commonwealth of Dominica Constitution Order, 1978 sets out a republican constitution similar to that of Guyana and like Australia is styled 'Commonwealth'. This Constitution devotes a separate chapter to the establishment of the office of Parliamentary Commissioner.

ST. LUCIA: St. Lucia is fortieth member of Commonwealth and became fully independent on Feb. 22, 1979. The St. Lucian Constitution Order, 1972 provides for the customary range of fundamental rights and freedoms and retains the system of Monarchy. The Constitution provides for the office of Parliamentary Commissioner.

168. Newsletter, supra note 126, July, 1979, p.3.
The Constitution of Ghana that came into effect on October 1, 1979 has made a provision for an office of Ombudsman.  

France has been functioning under the system of 'Droit Administratif' for a long time. Views have been expressed both for and against the compatibility of Ombudsman with a system of administrative courts. It has been argued that it would be dangerous to say that the mere fact that a country has a system of administrative courts, it need not have an Ombudsman. On the other hand, it has been stressed that if the Ombudsman is to be instituted in France to only fill the gaps in administrative control, in that case, he will not be playing the role of an Ombudsman, but will merely be a general information bureau. Till very recently no serious demand had been voiced to have an Ombudsman in France.

The idea of an Ombudsman in France got momentum with the two private member's Bills which were introduced in 1970 and 1972. Two reasons were given for this demand, 'bureaucratic proliferation' and the 'authoritarian and technocratic tendency of the current regime' and emphasis was laid on the need for a remedy which would be 'simple, free and readily accessible'. It was suggested that it would extend beyond the limits of judicial control into the sensitive area of the bad decision or the bad rule and would render the administration

175. Newsletter, supra note 126, July 1979, p.3.
177. Singh, supra, Convocation Address delivered at the Law Faculty of I.I.T., Chandigarh.
179. Id., p.228.
"less oppressive, more accessible and above all, more humane". These Bills paved the way for the Government's Bill which was introduced in December, 1972 providing for a 'Mediateur,' i.e., the Mediator, someone who intervenes to arrange any matter, the 'go-between' in order to bridge the gap between the administrator and the citizen. The Bill was carried through in 1973. Since then, the 'Mediateur' has been in operation. The introduction of Ombudsman in France did surprise many. It was labelled as merely a piece of 'window-dressing' but it has been observed that this is far from being the case.

(ii) FEDERAL REPUBLIC OF GERMANY:

In 1952, when the legislation was being prepared for setting up the armed forces, the idea of a military Ombudsman was discussed to make the parliamentary control more effective so that the Ombudsman could act as the 'eye of parliament'. Four years later, with the unanimous support of the Government and the Parliament and as welcomed by the public, the idea was carried through by amending the constitution and making a provision for the Military Ombudsman. Parliamentary law was passed a year later. The first appointment.

131. Id., p.221.
132. Id., p.212.
134. Theatre, supra note 179, pp. 142-43.
was made in 1959. In spite of Military Ombudsmen's successful role, no civil Ombudsman has so far been provided at the federal level. This is probably because of the positive contribution of the Petitions Committee of the Federal Parliament which is provided for in the Constitution. Moreover, the area which is normally covered by the Ombudsman is already being looked after by the administrative courts, so no serious need has been felt for a civil Ombudsman.

The only German state that has so far adopted the institution of Ombudsman is Rhine-land-Pfalz. The law was enacted in 1974. Under the law, the Ombudsman also holds the position of the permanent Commissioner of the Petitions Committee and as such petitions to the provincial Assembly as well as those sent to him come under his consideration. Other States have not opted for Ombudsman because Petition Committees exist in ten out of eleven States. These Committees have been playing a useful role. Still the idea of Ombudsman is catching up. The German Tribune in May, 1973 stated that the Chancellor is expected to announce the appointment of an Ombudsperson for women.

(iii) ISRAEL:

The State Comptroller law of 1958 was amended in March, 1971 in order to give the State Comptroller jurisdiction as Commissioner for Complaints from the
public. 193 During all these years, the Commissioner has dealt with a large number of complaints. 194 After the introduction of Commissioner for Complaints in 1972, the Sixth Amendment was introduced in the Military Justice Law thereby a provision was made for Soldier’s complaints Commissioner and ever since such a Commissioner has been in operation.

(iv) PHILIPPINES

Number of quasi-Ombudsman institutions have been created in Philippines by executive fiat from time to time. However, the first true Ombudsman was provided for by the law of 1969 in the form of a citizen’s counselor. This law was not implemented. 196 Ombudsmen really swept Philippines at a time when fundamental law was being reshaped as the people were almost unanimous in demanding reforms in the area of public administration. The Ombudsman was constitutionalized in the 1973 Constitution of Philippines. 197 The new Constitution introduced the parliamentary form of system rejecting the presidential system which was in existence since 1935. 198 Article XIII deals with the accountability of public officers. In order to make them accountable, provision was made for two bodies: Sandiganbayan and Tanodbayan.

194. See, The Jerusalem Post, a review of Four Years of Israel’s Ombudsman.
195. Frank, supra note 1, pp. 10-11.
196. Executive orders providing for quasi-Ombudsmen beginning from 1950 have been listed by Maria Luisa F. Tuason in her article - ‘A Commitment To Official Integrity’, 43 Philippine Law Journal, 548 at pp. 599, 603-159-165 (1973).
198. Constitution of the Republic of the Philippines, Art. IX.
199. Ida, Article XIII contains six sections.
Sandiganbayan literally means 'support of the nation.' The National Assembly has been given the power to create a special court, to be known as Sandiganbayan to deal with criminal and civil cases involving graft and corrupt practices committed by public officials and employees, including those in government owned or controlled corporations. The appellation 'Sandiganbayan' has no particular legal consequence but has been explained to imply 'that which the nation can rely upon' to sweep the government clean of those who are unworthy of the people's confidence.

The second body which the Constitution enjoins the National Assembly to create is an office of the Ombudsman to be known as Tanodbayen. It literally means, the 'Guard of the Nation.' It is to act as people's watchdog, to see that the government is not administered by buck-passers and clock-watchers, by bunglers and grafters, by civil servants who are civil only to the mighty and servants only to the moneyed. The Constitution has retained the popular name of the institution known to the world as also has given it a local tag of its own.

After the Constitution, no effort was made to appoint the Ombudsman but the President, in 1973,

201. Tuaason, supra note 196, p. 565.
202. Surra note 198, Article III, Section 5.
203. Tuaason, supra note 196, p. 566.
204. Surra note 198, Article III, Section 6.
205. Tuaason, supra note 196, p. 589.
established a special committee consisting of several cabinet members to handle complaints against public officials and also directed each department to set up public assistance offices to receive complaints. In addition to this, the Special Action Unit in the office of the President was created to receive complaints to be referred to heads of departments concerned. This arrangement continued for considerable time when the Secretary of Justice submitted a draft of the Presidential decree for the creation of the office of Ombudsman which was signed by the President on June 16, 1973. The first Ombudsman has been serving since Feb. 20, 1979.

There has been rampant corruption in public offices, and it is hoped that he will be able to check it.

(v) UNITED STATES OF AMERICA

The United States of America, since 1737, is being governed by a written constitution based upon the theory of separation of powers propounded by the Seventeenth and eighteenth century political philosophers Harrington, Locke and Montesquieu. All the three arms of the government have been given equal position by placing them under the rule of law established by the constitution. Each organ can do what is permitted by the Constitution and that too in accordance with "due process of law."
... Prof. K.C. Davis in 1961 advocated for Ombudsman in America. He asserted that compared with the rest of the world, they (Americans) are doing exceedingly well in protecting against improper governmental action. However, he pointed out that a good deal that is unwanted still seems to seep through. In this background, he believed that an Ombudsman can stop some of the leaks, can provide an additional line of protection against improper use of governmental power. Infact, the Ombudsman idea came in sharp force in 1966 with the publication of two seminal works of Professor Walter Elliborn on the subject. Since 1967, efforts have been made to establish an Ombudsman for the United States. However, hitherto, there is no Ombudsman at the federal level though there are certain other complaint handling systems. The commentator has observed that federal Ombudsman is in an uncertain state. Main opposition is on the score that Ombudsman would be just one more bureaucratic officer which will render the Government even more cumbersome and less efficient. There are some who hold the view that Ombudsman are nothing more than 'window dressing', an attempt by the big bureaucracies in government to convince the public that they are easily accessible, when in truth, they are not.

214. Id., 5,1062.
215. (1) Ombudsmen and others: Citizens protectors in the countries; (ii) When Americans complain: Governmental Grievance Proceedings. In 1974, largely because of these works, Harvard Law School awarded Walter Elliborn its prestigious Henderson Memorial Prize for scholarship in the field of administrative law.
216. Id., supra note 23 at pp. 145-161.
217. Frank, supra note 1, Vol. 1, pp. 29-30; Schroeder, supra note 5, p. 15-17.
219. Schroeder, supra note 5, p. 17.
220. Verkuil, supra note 213, p. 347.
221. Schroeder, supra note 5, p. 17.
In 1969, Prof. Powat observed that because of the magnitude of the problems encountered at the federal level, a full-scale Ombudsman plan is not likely to be adopted for some years.\footnote{Powat, supra note 23, \textit{ibid}.}

In early 1973, it was reported that in the United States, there are nearly 100,000 separate Governmental Units from the federal to the local level. In Federal Government alone, some three million people are employed without counting the armed forces.\footnote{Schrader, supra note 5, \textit{ibid}.} In such a big set up, it is difficult both for the citizen to master the intricacies of the bureaucracy as also for the Government to respond rapidly to the complaints of the citizen. In this context, Ombudsman has become popular in different spheres of American life and it is not easy to attempt a complete roll call of Ombudsman and allied institutions in America. It has been recorded that out of 64 Ombudsman around the world, 19 are in the United States.\footnote{Clydes, \textit{Citizen's Hope: Ombudsman for the 1970's}, \textit{Commonwealth Law Bulletin}, 522-34 at p.524 (April, 1979).} Some of the States and number of cities\footnote{States of Texas, Kansas, Iowa and Nebraska. It has been reported that on January 15, 1979, the Governor signed an Executive Order creating New York State Ombudsman Office to be headed by Lieutenant Governor Mario Cuomo. See, Newsletter, supra note 126, July, 1979, p.3.} already have Ombudsman offices. From 1962, when the first Bill was introduced in the State of Connecticut, until 1971 Ombudsman Bills were introduced in 42 States. From 1972 to 1974, proposals were submitted in 36 States. In 1975, Bills were

introduced in 33 States; 1976 in 21 States and in 1977
in 22 States. This all indicates that Ombudsman
continues to be on the legislative agenda of different
States. Moreover, Ombudsman in the United States is
no more confined to the governmental agencies. It
has assumed a great appeal with the Universities and
Colleges. More than 130 educational institutions have
Ombudsman. The idea has also caught up with hospitals,
nursing homes, newspapers, police departments and
corporations. The Ombudsman movement in the United
States reflects the demand for access and accountability
at all levels and it has the potential of spreading
in different areas.

217. SOVIET INEQUACY:
The Soviet bureaucracy performs functions which
have similarity and co-relation with the Ombudsman's
activities. It is interesting to note that even countries
under a totalitarian regime have found it expedient to
provide for a machinery for redress of grievances and
control of maladministration. Infact, the Soviet system
government is characterised by the existence of a
multiplicity of organs and institutions for checking,
supervision and control over the activities of the entire
machinery of administration. In this multiplicity,
the supreme power of supervision for the strict and
uniform observance of laws has been vested in the
Procurator's office. This bureaucracy is of long standing

227. ibid, p.36.
228. Bernard Frank and Peter L. Freeman, Ombudsman and
Other Complaint-Handling Systems Survey, 43
(July 1, 1978 - June 30, 1979).
229. Schroeder, supra note 5, p.16.
230. John D. Montello, Corruption; Control of
231. Leonard Schapiro, 'The Government and Politics
in Russia. It was instituted by Peter the Great in 1722. After the reform of the legal system in 1864, the procuracy fell into abeyance. It was left to the Courts to protect the rights of the individual. The system of procurators was revived after the revolution and has been in existence ever since in one form or another. The basic structure of the procuracy was laid down in the Constitution of 1936. This has been further incorporated with some modifications in the new Constitution of 1977.

The office of Procuracy is headed by the Procurator-General appointed by the Supreme Soviet of U.S.S.R. Under him are the Procurators of Union Republics, Autonomous Republics, Territories, Regions and Autonomous Regions who are appointed by the Procurator-General. Then, there are the procurators of autonomous areas and district and city procurators who are appointed by the procurators of Union Republics, subject to confirmation by the Procurator-General of the U.S.S.R. The procurator-General is responsible

233. Articles 113 to 117.
234. Constitution (Fundamental Law) of the Union of Soviet Socialist Republics of 1977 was adopted at the Seventh (special) session of the Supreme Soviet of the USSR, Ninth Convocation, on October 7, 1977. Chapter 21 containing Articles 164-169 in Part VII of the Constitution deals with the Procurator’s office. The detailed position of the Procuracy was laid down in a statute of the Supreme Soviet of May 24, 1955.
235. Id., Article 165.
236. Id., Article 166.
237. Id., Article 167.
238. Id., Article 167.
and accountable to the Supreme Soviet and in between the sessions of the Supreme Soviet, to the Presidium of the Supreme Soviet. The procurators function independently of any local bodies and are subordinate solely to the Procurator-General. Thus, the office of the procuracy is under the overall control of the Procurator-General.

The task of the procuracy is to ensure the strict and uniform observance of laws by all and at all central and local levels. If any citizen has been treated in contravention of a law, he can petition to the procurator. If the procurator finds that a prima facie case has been made out, he calls for the relevant information from the authority concerned. If after ascertaining the facts, the procurator feels satisfied that an illegality has been committed, he may ask the concerned authority to alter its decision. If he does not succeed, he would lodge a protest to a superior authority and try to get the illegal decision reversed by the superior authority. Even a minister's action or decision can form the subject matter of a protest by the procurator. The procurator cannot repeal unlawful decisions. These can be repealed either by the organ which adopted the decision or by corresponding superior body. The procurator can bring the violators of law either to criminal responsibility or to disciplinary responsibility. The procurator can initiate proceedings against those who are responsible.

239. Id., Article 165.
240. Id., Article 166.
241. Id., Article 164.
243. Id., Article 11.
244. Id., Article 13.
245. Id., Article 15.
The procurator's office deals with investigation of crimes also. Persons can be arrested only with his permission and in cases of doubt, it is his office which decides whether a person should be prosecuted. Many of the investigations are handled by his office. Still more, the procurator is obliged to supervise places of deprivation of freedom. The procurator is required to visit regularly the prisons to familiarise himself with their functioning, to free those who have been unlawfully detained and to bring the guilty to criminal or disciplinary responsibility.

The procurator's jurisdiction extends to the courts as well. He can ask for by way of supervision, the file of any civil or criminal case from judicial agencies, and lodge protests against illegal or unjustified judgements, decisions or decrees. These protests fulfil the same purpose as an appeal by a party to a case but with one major difference, that in case of a right of appeal, it is the discretion of the party whereas here, the party is solely dependent upon the discretion of the procurator. In other words, it is subject to the satisfaction of the procurator and not that of the party.

This being the set up and the domain of the procurator's office, it has been favourably compared

246, Id., Article 17.
247, Id., Articles 32-37.
248, Id., Articles 33 and 34. See also, V. Bolyasov, 'Make use of all means for supervision by the procuracy' in XV, No.3 Soviet Law and Govt., 47 (1975-76).
249, supra note 247, Article 28.
250, Id., Article 23.
251, Loeber, supra note 232, p.91.
with the Ombudsman in as such as that both deal with
problems of ultra vires, act on complaints of citizens
as also of their own, make recommendations and report
to the highest organs when they think that their advice
has been improperly rejected. The similarity in the
functions of two offices is not enough to equate them.
The Ombudsman's fundamental feature is that it functions
free from governmental, legislative or any other kind
of political control. But it is not so in case of
Procurecy. It functions under and not above the party
politics. D.A. Loebler says that Procurecy is an
instrument of the regime than of Justice, closely
dependent on the State and Party leadership and is
infact, the true champion of the policy of the
Communist Party. Leonard Schapiro is forthright in
pointing out that Soviet laws do confer on the citizens
a number of rights but provide virtually no means to
enforce them. In the Soviet system, there is nothing
corresponding to the writ of habeas corpus and if the
policy of the party endorses the illegal detention, the
procureur will not be able to help in upholding the
rule of law. As long as the procurecy continues to be
dependent and not independent, it will not be able to
effectively play its constitutional role and would not
be justified in equating it with the institution of Ombudsman.

252. See, Callhom, supra note 35, p. 367.
253. Loebler, supra note 232, pp. 97-98.
254. Schapiro, supra note 231, p. 152.
255. Charles T. Burbridge, 'Problems of Transferring
the Ombudsman Plan', 40 Int. Rev. of Admin.,
255. An ex-Finance Minister of India and then the Chairman of the University Grants Commission, J.M. Montesio, 'Comment', *Public Law*, Summer, 1965, pp. 31-33, at p. 32.
256. Montesio, supra note 257.
258. Monteiro, supra note 257.
259. See, Proceedings of the Third All India Law Conference, The Indian Law Institute, New Delhi, 1967, Part II-C.
The Rajasthan Administrative Reforms Committee on its 1963 report recommended the appointment of an Ombudsman in the State to look into the actions of the Government which are considered to be illegal, unjust, arbitrary or flagrantly violative of existing rules or established precedents. In November, 1963, late Prime Minister Jawaharlal Nehru favourably reacted to the idea of Ombudsman as he liked the idea that Ombudsman would have even the authority to deal with charges against the Prime Minister.

After one full year, finding that the Government had not done anything, Shri Singhi moved a resolution in the Lok Sabha on April 3, 1964 for setting up an Ombudsman type mechanism. The resolution had almost the unanimous support but it was withdrawn on the assurance of the Government that it would get the matter investigated with a view to devise suitable machinery to achieve the desired objective. When the Government did not come forward with any proposal for a year, Shri Singhi moved another resolution on April 23, 1965, for forming a Committee of Members of Parliament to examine the feasibility of Ombudsman in India. In view of strong and favourable parliamentary opinion, the Government of India constituted a special consultative group of the Members of Parliament on Administrative Reforms to consider this question. The Committee of the group was appointed to go into the question of administrative tribunals and grievance machinery at the Centre. The Sub-Committee in its preliminary report recommended that the French

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266. The Sub-Committee consisted of the Minister of Home Affairs (Chairman) and Messers B.P., Sinha, R.K. Khadilkar, Jaipal Singh, J.S. Panjbozam, Dr. L.J. Singhi and S.N. Chaturvedi, Members of Parliament, as members.
System of dual administration was not suitable for this country and that an immediate study in all its political, legal and administrative aspects be undertaken by a Committee consisting of administrators, Jurists, members of Parliament and others on the functioning of Administrative Tribunals and on installing the institution of Ombudsman on the presumption that Administrative Tribunals and Ombudsman will complement each other. The Government of India appointed the Administrative Reforms Commision on January 5, 1966. It submitted its interim report on October 21, 1966 and made a powerful plea to set up the system of Ombudsman and detailed a scheme for the same purpose.

Ananthan Singh, M.P., moved a resolution in the Lok Sabha which was discussed on November 10 and 25, 1966 to direct the Government to implement expeditiously the recommendations of the Commission by enacting suitable legislation for the purpose. The Home Minister assured that it was not the Government's intention to delay the matter, that the government was giving consideration to it and the comments and reactions of the state governments in this respect were awaited. The resolution was thereupon withdrawn as the Government did not come forward for a year with the Bill, but it was introduced on November 16, 1967, a Private Member's Bill in the Lok Sabha incorporating verbatim the provisions of the draft bill proposed by the Administrative Reforms Commission. The Bill involved certain financial commitments, so it

268. Shri L. Loranjit Resai (Chairman), Messers R.C. Mathur, H.V. Kamath and V. Shankar (Members).
269. Titled, 'Problems of Redress of Citizen's Grievances'.
270. L. & L. Deb., 1st Ser., 26-34.
271. L. & L. Deb., 1st Ser., 26-34.
was referred to for the President's recommendation and since nothing came out of it, J.K. Bho then moved, on December 1, 1967, that the Bill be circulated for the purpose of eliciting public opinion thereon. The Government opposed the move saying that although only ten state governments had sent in their replies, of which some had not agreed with the scheme, the Government of India did not want to delay the introduction of this institution and without waiting for a consensus from various states, the Government would go ahead to bring forward legislation for establishing it at the Centre. Insistently on such a categorical assurance of the Minister, the House voted the Bill for eliciting opinion.

The Government of India, in the meantime introduced on May 9, 1968, the Lokpal and Lokayuktas Bill in the Lok Sabha. The Bill was the modified version of the proposals made by the Administrative Reforms Commission. The motion for reference of the Bill to a Joint Committee of both the Houses was moved on May 10, 1968 in the Lok Sabha by the then Minister of State in the Ministry of Home Affairs. It was discussed and adopted on the same day. A Joint Committee of both the Houses was constituted under the Chairmanship of Mr. M.B. Push. The Committee had number of sittings, examined statement of memoranda/representations from different parties and took evidence of parties.

275. Mr. V.G. Suhla.
276. The Joint Committee comprised of 45 Members (including the Chairmen), 30 from Lok Sabha and 15 from Rajya Sabha.
278. Id., 42 Memoranda/representations, Refer P.I, para 7.
individuals. It submitted its report on 25th March, 1969 in which it suggested number of amendments to the Bill. The Bill was considered by the Lok Sabha at length and was finally passed on August 20, 1969. The Bill was pending for the consideration of the Rajya Sabha when the Lok Sabha was dissolved in December, 1970. The Bill, therefore, automatically lapsed. In the reconstituted Lok Sabha, the Government again introduced on August 11, 1971, the Lokpal and Lokayuktas Bill. This Bill was not even taken up for consideration till the dissolution of the Lok Sabha itself in early, 1977. Around the time that the Lok Sabha was dissolved, Justice V.R. Krishna Iyer pointedly remarked that the whereabouts of the Lokpal Bill are for the 'intelligence branch' to find out.

In 1977 Lok Sabha elections, the Janata Party in its manifesto promised to 'enact the long-pending Lokpal and Lokayuktas Bill' and to bring the 'Prime Minister and Chief Ministers within its purview'. The promise was reiterated after winning the elections. As the Government

279. Id., 16 Parties/Individuals gave evidence before the Committee. Refer P. 26, Appendix IV.
281. In accordance with the provisions of Article 107(5), Constitution of India.
286. Shri Chanan Singh, the then Home Minister told the Pressmen on 13.4.1977 that the Bill will be ready to be presented during the coming session of the Parliament: The Times of India, Delhi, April 19, 1977, p.1.
287. Prime Minister Morarji Desai on 13.5.1977 expressed the policy of the Government to set up an independent agency called the Lokpal: Indian Express, Delhi, 13.5.1977, p.1.
was busy in drafting the Bill. Mr. K. Deo, M.P., introduced on June 17, 1977 in the Lok Sabha, the Lokpal Bill.

On 29th July, 1977, the Government introduced the Lokpal Bill in the Lok Sabha. The Home Minister tried to get the Bill through the Lok Sabha after two days’ debate but the members were not keen as they were apprehensive that it would affect their political career. The Bill was referred to a Joint Committee. The Committee was to submit its report on Nov. 14, 1977 but it was allowed three extensions and finally it submitted its report on July 20, 1978. The Committee suggested number of modifications in the Bill. The report of the Committee included nine notes of dissent.

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286. Bill No. 21 of 1977, the Gaz, of Ind. Extraordinary Part II - Sec. 2, p. 223 (17.6.1977).
289. The motion for referring the Bill to the Joint Committee was adopted in the Lok Sabha on 18, 1977 and in the Rajya Sabha on 3.9.1977. It comprised of 45 members, 30 from Lok Sabha and 15 from Rajya Sabha with Mr. Shyam Rishu as the Chairman.
291. Report of Joint Committee on the Lokpal Bill, 1977, C.S. (I) No. 313 presented on July 20, 1977. In all, the Committee held 25 sittings, considered 30 different memoranda from various associations, organisations and individuals and heard the views of Mr. S.V. Gupta, Attorney-General of India on the points raised by the members vis-a-vis the constitutional aspects of the Lokpal Bill, 1977.
293. Id., pp. XIX-XL.
Bill was taken up for consideration on May 17, 1979 when the Government did not adopt some of the recommendations of the Joint Committee. The budget session of the Parliament concluded on May 19, 1979 with an inconclusive debate on the Lokpal Bill. In the July session of the Parliament, the Bill was taken up for consideration but before it could be passed, the Lok Sabha was dissolved on Aug. 20, 1979 and once again the Bill lapsed.

(ii) IN THE STATES:

The institution of Lokpal had been mooted in the Parliament in 1963, still we do not have a Central Lokpal. Its gestation period at the Centre does not seem to come to an end. However, the institution is gradually catching up in the States. The State of Maharashtra was the first one to have a Lokayukta. The legislation was passed in 1971, first appointment was made in 1972, second in 1978 and third in 1979. Rajasthan came forward with the legislation in 1973.

294. (i) The Joint Committee had recommended the exclusion of C.R.'s from the purview of the Lokpal, the Government decided in favour of their inclusion. (ii) The Committee had suggested 'speaker' to be the competent authority to deal with reports against the K.A., the Government substituted the 'Lok Sabha'. Refer XXVII L.S. Deb., cc. 384-386, (May 17, 1979).

295. It was discussed in the Lok Sabha on July 10, 1979, XXVIII L.S. Deb., cc. 300-37, 399-80 (July 10, 1979).


298. Justice A.G. Shanti served as Lokayukta from Jan., 1978 to Jan., 1979 when he resigned.

298A Justice N.D. Kamath was administered oath on 6.9.1979. See, Hindustan Times, Delhi, 7.9.1979.

So far two appointments have been made. The first appointment in Bihar was made under an Ordinance of 1973. Regular legislation was passed in 1974. The second appointment was made in 1978. Uttar Pradesh enacted the Lokayukta legislation in 1975 and announced the first appointment in 1977. In Karnataka, the first appointment was made under an Ordinance.


301. Bihar Lokayukta (Second) Ordinance, 1973. The Ordinance was signed by the Governor on 6-5-1973 and the same was published in the Bihar Gaz. on 11-5-1973. Dr. S.V. Sohoni, Retired I.C.S. Officer was appointed the first Lokayukta on 23.5.1973. See Hindustan Times, Delhi, May 29, 1973.


303. Justice Shyam Narendra Prasad Singh, retired C.J. of the Patna High Court was appointed the Second Lokayukta of Bihar on 8-6-1978. See Times of India, Delhi, 9,6,1978.


306. The Karnataka Lokayukta Ordinance, 1979 (No. 6 of 1979) published in Karnataka Gazette, Ext. part 1 No 2-3, dated 30-7-1979. Justice C. Bonniah was the first appointee.
In Orissa, legislation was passed in 1970 and as yet no appointment has been made. Andhra Pradesh Lokayukta and Up-Lokayukta Bill, 1975 is still awaiting President's approval. The State of Madhya Pradesh passed the legislation on the subject in April, 1975 but it was received back from the President for reconsideration. Bills were introduced in 1975 in the States of Gujarat and Himachal Pradesh, but they have not yet been passed. Punjab has expressed its desire to soon appoint a Lokayukta. In Tamil Nadu and Jammu and Kashmir some other investigatory agencies are functioning whereas a proposal is pending consideration.

307. The Orissa Lokpal and Lokayuktas Act, 1970 was passed on Oct. 28, 1970, received assent of the President on 8-2-1971 and was published in the Orissa Gazette, Ext. I on 20-2-1971.
308. Frank, supra note 1, p.27.
309. Times of India, Delhi, 26-6-1978.
311. Frank, supra note 1, p.27.
313. The Himachal Pradesh Lokayukta and Upa Lokayuktas Bill, 1975 was introduced on March 24, 1975.
314. Frank, supra note 1, p.27.
315. Indian Express, Chandigarh, 31-7-1979, p.3; Times of India, Delhi, 7-9-1978, p.3.
in Kerala. The Governments of Nagaland, West Bengal, Meghalaya, Tripura and Haryana have not yet considered the question of appointment of Lokayuktas.

It is an unfortunate coincidence that as and when a Lokpal Bill has been introduced in the Lok Sabha, it has been dissolved for some reason or the other without the Bill having been passed. There is as yet no move in the present Lok Sabha for the introduction of a Lokpal Bill.

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319. Public men (Investigation about Misconduct) all of the Govt. of Kerala was submitted to the Union Government for its approval. See, Times of India, N. Delhi, Nov. 26, 1977.