



# Recent Amendment to the Lokpal and Lokayuktas Act, 2013 [The Lokpal and Lokayuktas (Amendment) Bill, 2016]

*Bill passed by the Lok Sabha on 27th July, 2016*

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The Lok Sabha has passed a bill named “The Lokpal and Lokayuktas (Amendment) Bill, 2016”. This is to amend the Lokpal and Lokayuktas Act, 2013.

Basically, Sec 44 and Sec 59 have been amended. Let us look at each of them.

### PART A

**Sec 44** - Sec 44 falls under Chapter XIII which is about ‘**Declaration of Assets**’. A comparison of the Section 44 between the erstwhile Lokpal and Lokayuktas Act, 2013 and the Lokpal and Lokayuktas (Amendment) Bill, 2016 is provided below:

<u>Sec 44 of the Lokpal and Lokayuktas Act, 2013</u>	<u>Sec 44 of the Lokpal and Lokayuktas (Amendment) Bill, 2016</u>
<p>(1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.</p> <p>(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—</p> <p>(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;</p> <p>(b) his liabilities and that of his spouse and his dependent children.</p> <p>(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in subsection (2), to the competent authority within thirty days of the coming into force of this Act.</p> <p>(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.</p> <p>(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.</p> <p>(6) The competent authority in respect of each Ministry or Department shall ensure that all such statements are published on the website of such Ministry or Department by 31st August of that year.</p> <p><i>Explanation</i>—For the purposes of this section, "dependent children" means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.</p>	<p>On and from the date of commencement of this Act, every public servant shall make a declaration of his assets and liabilities in such form and manner as may be prescribed.</p>

As can be seen the following are withdrawn:

1. 30 days time limit for submission of his, his spouse and his dependent children's information on assets and liabilities - **Sec 44 (2)**
2. 30 days time limit for above mentioned submission if he/she is holding office as public servant at the time of commencement of the act - **Sec 44(3)**
3. Annual returns to be filed for assets and liabilities by 31<sup>st</sup> July every year - **Sec 44(4)**
4. The prescribed forms in which the returns are to be submitted - **Sec 44(5)**
5. The competent authority and the requirement for such authority to publish the information on the website - **Sec 44(6)**

**What are its implications and next steps?**

- 1) Some and substance of yesterday's amendment is that certain regulatory and compliance mechanism which were specifically provided in the Act have been withdrawn with simultaneous power to the Government to frame rules in that regard. Therefore, it would not be correct to presume whether the rules so framed would be harder or softer than the existing requirements.
- 2) However, the intent of the Government seems to be towards diluting certain disclosure requirements including declaration pertaining to spouse and children.
- 3) The return filing date and period have been deleted from the Act which implies that the respective dates will be notified after the rules are framed.
- 4) Now that the amendment bill has been passed by Lok Sabha. It will have to go to Rajya Sabha and finally receive the President's assent for it to become a law.
- 5) Therefore, technically all the existing notifications regarding filing of return remain valid. However, if the filing of return is deferred beyond 31<sup>st</sup> July, 2016 by 'Public Servants' then it should not be treated as willful default under the Act due to the recent amendment.
- 6) In the light of aforesaid, we recommend that all 'Public Servants' may wait till further notification from the Government.

## PART B

Now, let us look at Sec 59. In Sec 59 only sub-section (2) and clause (k) has been amended. Here below is the comparison:

<b><u>Sec 59 (2) of the Lokpal and Lokayuktas Act, 2013</u></b>	<b><u>Sec 59(2) of the Lokpal and Lokayuktas (Amendment) Bill, 2016</u></b>
<b>(k) the form of annual return to be filed by a public servant under sub-section (5) of section 44</b>	<b>(k) the form and manner of declaration of assets and liabilities by public servants under section 44</b>

This is a logical change as the erstwhile Sec 44(5) has been dropped. Further, the Government has been empowered to make rules retrospectively from the date on which the act came into force (i.e. 1<sup>st</sup> January, 2014).

## PART C

### **Analysis and Conclusion**

- As per the amendment to Sec 44, the Government is supposed to prescribe the form and manner in which the 'Public servant' shall make a declaration of his assets and liabilities. Therefore, it remains to be seen how the new notification whenever issued addresses these issues.
- What has not happened is amendment to sec 14(1) (g) and 14(1)(h).
- Therefore, certain categories of NGO functionaries still remain covered as 'Public Servants'.

It is also reported that this act will be received by the Standing Committee and it is expected that the Standing Committee would give its report before the next session of Parliament.

