



Brief overview of the Lokpal and Lokayuktas Act, 2013

(LLA, 2013)

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Brief overview of the Lokpal and Lokayuktas Act, 2013

The Lokpal and Lokayuktas Act 2013 (LLA, 2013) has a provision under which the functionaries of FC registered NGOs receiving more than 10 lakh rupees annually are required to file disclosures. The LLA, 2013 is an Act intended to regulate and control corruption in public institutions. However, NGOs which are generally private institutions for public purposes have also been included within the purview of LLA, 2013 under certain specific circumstances. Recently, a notification for issue regarding such filing procedures is released.

There are two important notifications pertaining to Section 14(g) and Section 14(h) of the LLA, 2013. The implications of these two changes are as under:

- Any NGO receiving more than Rupees 1 crore grant annually are covered under the law and its functionaries are required to file disclosure by 31st July;
- Any NGO receiving more than Rupees 10 lakh annually from foreign sources under FCRA 2010 is also covered and its functionaries are required to file disclosure by 31st July.

The law will apply to the functionaries and officers of the NGOs and not the NGOs per se. In other words, the officers and functionaries of NGOs shall have to file annual returns declaring their assets and other prescribed particulars every year under LLA, 2013. For the current year all the functionaries and officers have to file the return for the year ended 31st March, 2016 on or before 31st July, 2016.

If an NGO has received, say, 15 lakh rupees foreign contribution in one year then the law shall apply for all the forthcoming years till the amount is utilized or exhausted. It may create practical problems i.e. a corpus donation will never be exhausted and therefore, the LLA, 2013 will also continue to apply.

The amended provisions will treat the Director, Manager, Secretary or Officer of an NGO as a “Public Servant”. According to the provisions of ‘Declaration by Public Servant under Section 44 of LLA, 2013’, he/she shall make a declaration of assets and liabilities in the manner as provided under this Act. The definition of Public Servant will cover Board Members and Senior Employees of NGOs.

In our opinion “only remunerated Board Members and Senior Management Staff” should comply with the provisions.

The declaration shall include:

- i. The name of spouse, minor or dependent children and the position held by them;
- ii. Details of cash and bank balances and other moveable properties including investment, advances, vehicles, jewellery etc;
- iii. Details of immovable property whether residential, commercial, agricultural or otherwise;
- iv. Details of loan taken along with the detail of loan provider.

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.

In case where such Public Servant or Director and Officers of NGOs do not make declaration of their assets, it will be treated as an offence and the Lokpal shall have the power to initiate inquiry and even confiscate the assets of such officers.

The Competent Authority to whom the return shall be filed will be the respective Ministry which has provided the ‘Maximum Proportion’ of the grant or donation during the previous year. In other words, in case of government grant the Competent Authority may also change from year to year. In case of foreign contribution received the Competent Authority shall be the Ministry of Home Affairs.

The FCRA Department is also issued a notification in this regard requiring compliance by 31st July, 2016.

In our opinion the Section 14(1)(h) will apply to “all FC registered NGOs including Section 8 companies”.

The Section 14(1)(h) of the LLA 2013 seems to be in violation of Article 14 of the Constitution of India therefore liable to quashed. To our understanding there are various writs being filed in various High Court of the Country.

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