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 **LOKPAL - APPLICABILITY  
TO NGOs**

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# EVOLUTION

- 8 attempts (1968 – 2001) before it was finally passed in 2013 due to mass public pressure through Anna Hazare movement.
- Every time bill lapsed for one reason or other.
- In 2011 bill presented in LS on 22 Dec and passed on 27 Dec. RS passed it in Dec 2013.
- President assent rec'd on 1 Jan 2014 and became effective on 16-1-2014.
- However it has remained effective only in paper and not in reality.

# Applicability

- Apply to public servants in and outside India. (S.1((3))
- Definition : Competent Authority In case of non-Govt NGOs competent authority to be specified by Gol. (S.2(1)(c))
- Public Servant as defined under S.14 (a) to (h) (S.2(1)(o))
- If terms used not defined under Lokpal Act, then reference has to be under Prevention of Corruption Act 1988. (S. 2(2))

# Lokpal – A separate Body (S.3)

- Chairperson (1) – retired CJI or retired SCJ or eminent person.
- Members (max 8) – 50% Judicial Members & 50% from SC/ST/OBC/Minorities/Women
- Selection process to be done by Selection Committee from Search Committee list of persons.
- Separate independent wings of Investigation & Prosecution.
- Salary conditions of all Lokpal employees to be formulated by Lokpal within the jurisdiction of Parliament.
- Expenses of Lokpal chargeable to Cons. Fund of India.
- Lokpal authorised to investigate wherever complaint received against a public servant, including PM.

# Lokpal Applicability to NGOs

Lokpal authorised to inquire into allegations of corruption against following persons (both present & past)

- Chairperson/member/ officer/**employee** in a Board / Corporation/ Authority/ Company/ society/ Trust/ autonomous body established by an Act of Parliament or wholly/partly funded or controlled by Gov; (S.14(f))
- Director/Manager/Secretary/other officer of every society or AOPs or Trust wholly or partly financed by the Govt; (S.14(g))

*Notif. 2155 dt 20/6/2014 states applicability wherever grant of Financial Assistance of central govt Rs one crore or more.*

## Cont'd.....Lokpal Applicability to NGOs

- Director/Manager/Secretary/other officer of every society or AOPs or Trust receives Rs 10 lakh or more under FCRA ; (S.14(h)) whether under Registration or Prior permission.
- First two provisions cover all type of entities including a S.8 company, however 14(h) does not cover a company.
- Persons covered deemed to be persons falling under S. 2(c) of Prevention of Corruption Act 1988.
- A complaint under this Act shall relate to only such period for which the person concerned was holding / serving the office.

# Who all covered in an NGO

- Under both 14(l)(g) & (h) persons covered Director, Manager, Secretary or other officer
- Office bearers, Executive Committee members
- Officer : Full-time key personnel under whose directions NGO generally operates CEO / CFO
- Return needs to be filed till donations rec'd are fully utilised.
- Individuals responsible to file the returns

# Declaration of assets (S.44)

- Every public servant to declare assets and liabilities of herself / himself, spouse and dependent children. (Responsibility of public servant).
- Within 30 days of taking oath of office.
- Within 30 days of Act becoming effective (1<sup>st</sup> August 2014) and thereafter every year till he remains public servant by 31<sup>st</sup> July of each year.
- Returns to be filed with 'Competent Authority'
- Competent authority to publish such returns on its website.
- Returns required to be filed by 31<sup>st</sup> July 2016 (see Notification 414E 11<sup>th</sup> April 2016)
  - as at 31<sup>st</sup> August 2014,
  - as at 31<sup>st</sup> March 2015 &
  - as at 31<sup>st</sup> March 2016
- Act applicable only to central Govt employees but in case a State Govt employee has worked on a posting which is under Gol than Lokpal can initiate an enquiry against the public servant after obtaining State Govt permission. S. 14(1)(f)



# Current Status of implementation of the Act

- Current status of Lokpal : Body not formulated.
- Amendment Bill introduced in Parliament in 2014.
- Proposed amendments : Selection method since no Leader of Opposition
- Secretary to Lokpal's rank to be reduced from Secretary to Additional Secretary, similarly Director of Inquiry & Director of Prosecution ranks be reduced to Joint Secretary from Additional Secretary
- Several consequential changes due to changes in Delhi Special Police Establishment Act (1946).
- Bill currently CBI has raised several objections for changes made in amendment bill.
- Currently the bill has been introduced in Lok Sabha.

# Competent Authority

- Different for different persons depending on public servant's position & ministry.
- In case of NGOs becoming eligible due to Rs 1 crore grant/cont., Minister Incharge of the ministry contributing the largest sum
- FCRA related NGOs – Minister of Home
- File to all whoever has provided the funds with intimation which Minsitry is the Competent Authority

# Consequences of Non-Compliance

- If wilful default or for reasons not justifiable, one fails to declare the assets or gives misleading information then it would be presumed that such assets belong to the public servant acquired through corrupt means.
- **Assets exempted from above, 4 months basic pay or Rs 2 lakhs, whichever is higher. (Rule 4)**
- False or frivolous complaint on conviction may be punished with imprisonment of upto 1 year and fine upto Rs 1 lakh. Plus liable to pay compensation + legal expenses to public servant.
- Not applicable if complaint made in good faith.

# Other Misc. provisions

- Even if the spouse is a Public servant, both will have to file the returns.
- If a public servant is member or Karta in an HUF, declare the value of share in the property of HUF both movable and immovable.

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- Questions ??