

**DRAFT FAQs WITH PROPOSED REPLIES/INFORMATION, IN RESPECT OF
LOKPAL AND LOKAYUKTAS ACT, 2013**

<p>1. Whether the Lokpal and Lokayuktas Act, 2013 has come into force?</p>	<p>Yes, vide Gazette Notification No. S.O. 119(E) dated 16-01-2014, the Lokpal and Lokpal Act, 2013 (1 of 2014 has come into force from the said date.</p> <p>However, the institution of Lokpal is yet to become functional, since the Act needs some amendments, <i>inter alia</i>, so as to resolve certain issues relating to appointment of Chairperson and Members of Lokpal, etc. in the absence of a Leader of Opposition recognized as such in the Lok Sabha. For this purpose, a Bill has been introduced in Parliament and is currently under consideration of the Department Related Parliamentary Standing Committee on Personnel, Public Grievances and Law and Justice.</p>
<p>2. What are the Rules and Orders notified under the provisions of the Lokpal and Lokayuktas Act, 2013?</p>	<p>The Rules and Orders notified under the Act so far, are as follows:-</p> <p>(a) The Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Rules, 2014 [notified vide Gazette. Notification No. G.S.R. 501(E) dated 14-07-2014 amended vide Notification No. GSR No. 638(E) dated 08-09-2014]</p> <p>(b) The Public Servants (Furnishing of Information and Annual Return of Assets and Liabilities and the Limits for Exemption of Assets in Filing Returns) Second Amendment Rules, 2014. [notified vide Gazette Notification No. G.S.R. 918(E) dated 26-12-2014]</p> <p>(c) Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Rules, 2014. [notified vide Gazette Notification No. G.S.R. 31(E) dated 17-01-2014].</p> <p>(d) Search Committee (Constitution, Terms and Conditions of appointment of members and the manner of selection of Panel of Names for appointment of Chairperson and Members of Lokpal) Amendment Rules, 2014. [notified vide Gazette Notification No. G.S.R. 620(E) dated 27-08-2014]</p> <p>(e) The Lokpal and Lokayuktas (Removal of Difficulties) Order, 2014 [notified vide Gazette Notification No. S.O. 409(E) dated 15-02-2014 with subsequent amendments having been made vide Notifications No. S.O. 1840(E) dated 14-07-2014, No. S.O. 2256(E) dated 08-09-2014 and No. S.O. 3272(E) dated 26-12-2014]</p> <p><i>The rules and orders as referred to above can be accessed by clicking on the links above.</i></p>
<p>3. What is the jurisdiction of Lokpal in respect of Inquiry?</p>	<p>Please see Section 14 of the Lokpal and Lokayuktas Act, 2013 (1 of 2014).</p>

<p>4. Whether the Lokpal and Lokayuktas Act, 2013 is applicable to the employees of State Governments?</p>	<p>In terms of provisions of section 14 of the Lokpal and Lokayuktas Act, 2013 the employees of the State Government are not covered unless they have served in connection with the affairs of the Union. The jurisdiction of the Lokpal will extend on the following categories of employees only after obtaining the consent of the concerned State Government. [proviso under section 14(1)(f) refers] inter alia, over the following categories of public servants referred to in section 14(1)(d) & (e):</p> <p>“(d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the Union;</p> <p>(e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of section 20;”.</p> <p>Thus, it may be seen that the employees of the State Governments are not under the jurisdiction of the Lokpal.</p> <p>Further, under section 63 of the Act, the States are under an obligation to establish an institution of Lokayukta, by a law enacted by the State Legislature, if not already done so, within a period of one year from the coming into force of the Act. Employees of the State Government are, inter alia, to be covered under the jurisdiction of the respective Lokayuktas.</p>
<p>5. Whether the Lokpal and Lokayuktas Act, 2013 is applicable on All India Service officers working under the control of the State Government?</p>	<p>Yes, as they are public servants within the meaning of clause (o) of sub-section (1) of section 2 of the Act, read with sub-section (1) of section 14 of the Act.</p> <p>However, consent of the State Government would be necessary before Lokpal orders an Inquiry in respect of such an officer if he is employed in connection with the affairs of a State Government. Please see proviso after clause (f) of sub-section (1) of section 14.</p>
<p>6. Under what provisions of the Lokpal and Lokayuktas Act and Rules, the information in respect of the Assets and Liabilities is to be furnished by Public Servants.</p>	<p>Section 44 of the Lokpal and Lokayuktas Act, 2013 and the Public Servants (Furnishing of Information and annual return containing declaration of Assets and Liabilities by public servants and Limits for Exemption of Assets in filing Returns) Rules, 2014 notified on 14th July 2014 as last amended by the amendment Rules notified on 26th December, 2014, the information in respect of the Assets and Liabilities is required to be furnished by all Public Servants.</p> <p><i>[For links to the rules referred to above please see S. No. 2 above].</i></p>

7. What is the difference between the declaration of assets by public servants under the Lokpal and Lokayuktas Act, 2013 and the filing of property returns by public servants under the applicable Conduct Rules?

The provisions relating to filing of assets and liabilities by public servants are contained in section 44 of the Lokpal and Lokayuktas Act, 2013. Under the said section, a public servant is required to furnish to the competent authority the information relating to –

- (a) **the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries; and**
- (b) **his liabilities and that of his spouse and his dependent children.**

As against this, the general requirement as contained in most of the applicable Conduct Rules for government servants (AIS Conduct Rules, CCS Conduct Rules, etc.), require the public servant to submit a return, giving the full particulars regarding :—

- (a) **the immovable property owned by him, or inherited or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person;**
- (b) **shares, debentures, postal Cumulative Time Deposits and cash including bank deposits inherited by him or similarly owned, acquired or held by him;**
- (c) **other movable property inherited by him or similarly owned, acquired or held by him; and**
- (d) **debts and other liabilities incurred by him directly or indirectly.**

Further, till such time, the relevant Conduct Rules are aligned with the Lokpal law, only those categories of Government servants are required to file their declarations/annual returns under such rules, which are presently covered under them. Under these rules, public servants are generally required to submit annual property returns as on the 1st January of the year, on or before 31st January of that year. The Lokpal Act [section 44(4)], on the other hand, requires the filing of annual returns as on the 31st March of the year by each public servant on or before 31st July of that year. Thus, the requirements of the Lokpal and Lokayuktas Act, 2013 and the relevant Conduct Rules are different in the manner of filing information also.

<p>8. (a) Whether Government has prescribed any formats for the submission of information regarding assets and liabilities by public servants under the Lokpal law?</p> <p>(b) Where can the forms be accessed?</p> <p>(c) What are the timelines for furnishing such information specific to the years 2014 and 2015, as also for subsequent years?</p>	<p>The form and manner in which information regarding assets and liabilities are required to be furnished by public servants have been prescribed under the Public Servants (Furnishing of information and Annual Return of Assets and Liabilities and Limits for exemption of assets in filing Returns) Rules, 2014, as amended from time to time. A complete set of the formats and clarifications as regards the timelines for filing of such declaration and returns have been provided in this Department's <u>OM No.407/12/2014-AVD-IV-B dated 18-03-2015</u>. The timelines for annual returns required to be filed for different years is as follows:</p> <p>(a) The first return (as on 1 at August, 2014) under the Lokpal Act should be filed on or before the 15th October, 2015;</p> <p>(b) The next annual return under the Lokpal and Lokayuktas Act, 2013 for the year ending 31st March, 2015 should be filed on or before the 15th October, 2015; and</p> <p>(c) The annual return for subsequent years as on 31st March every year should be filed on or before 31st July of that year.</p>
<p>9. To whom is the information in respect of assets and liabilities required to be furnished? Is it necessary to forward copies of such information to the Lokpal or to the DoPT?</p>	<p>Section 44 of the Act mandates that the information regarding assets and liabilities is to be submitted by each public servant to his/her own competent authority (as defined in the Act). There is no requirement for submission of copies of such information by individual officers to the Lokpal or to DoPT other than those working in DOPT or Lokpal.</p>
<p>10. Is there any requirement that all applicable Conduct Rules for different categories of public servants have to be amended in line with the provisions of the Lokpal and Lokayuktas Act? Please provide complete details.</p>	<p>Section 56 of the Lokpal and Lokayuktas Act, 2013 reads as under:-</p> <p>“56. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.”.</p> <p>The above provisions mandate that even if there are any provisions in any existing law (which, inter alia, includes relevant Conduct Rules framed under Article 309, etc.) which are inconsistent with the provisions of the Lokpal and Lokayuktas Act, the provisions of the said Act shall have effect, notwithstanding such inconsistency. Thus, the provisions regarding filing of information/annual returns regarding assets and liabilities by public servants under section 44 of the Lokpal and Lokayuktas Act shall have effect, notwithstanding anything inconsistent therewith in the applicable Conduct Rules. In other words, the filing of information/annual return under the Lokpal law in the manner prescribed by rules made under that Act, is a mandatory requirement, and the same cannot be dispensed with under any circumstances, except by an amendment of the Act itself. Attention in this regard is also invited to section 57 of the</p>

Lokpal and Lokayuktas Act which reads as under:-

“57. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.”.

A combined reading of section 57, along with section 44 of the Act, would make it clear that the requirement of filing returns regarding assets and liabilities under the Lokpal and Lokayuktas Act is in addition to, and not in derogation/supersession of the requirement of filing similar returns under the existing Conduct Rules. In view of this, the requirement of filing of property returns under the existing Conduct Rules is an independent requirement under the applicable rules and the same can be dispensed with, only by amending those rules. **In other words, the requirement of filing returns of assets and liabilities under the applicable Conduct Rules has to continue, till such time as the provisions of those rules are harmonised with the relevant provisions of the Lokpal Act and the rules framed thereunder, by carrying out appropriate amendments in them.**

Attention is further invited to the Central Government's notification, S.O. 3272(E) dated 26-12-2014], further amending the Lokpal and Lokayuktas (Removal of Difficulties) Order, 2014, for the purpose of extending the time limit for carrying out necessary changes in the relevant rules relating to different services from “three hundred and sixty days” to “eighteen months”, from the date on which the Act came into force, i.e., 16th January, 2014. In view of this, all Ministries/Departments/cadre authorities are required to complete the necessary exercise for harmonising the provisions of relevant Conduct Rules with the provisions of the Lokpal and Lokayuktas Act and the rules made thereunder, within this extended time of eighteen months. All Ministries/Departments and other cadre controlling authorities have been appraised about this requirement separately through D.O. letters dated 8th September, 2014 and 29th December, 2014 issued by this Department. **In view of this, it is incumbent upon all Ministries / Departments/cadre controlling authorities to ensure that the relevant conduct rules relating to services administered/controlled by them are brought in harmony with the provisions of the Lokpal Act and rules made thereunder within this extended time limit of eighteen months.**

<p>11. Whether a public servant/ Government Servant has to submit the Annual Property Return as required under the Conduct Rules applicable and also furnish the details of his Assets and liabilities and also his/her spouse and dependent children under the Lokpal and Lokayuktas Act, 2013</p>	<p>Yes, till such time the applicable Conduct Rules are attuned with the relevant provisions of the Lokpal and Lokayuktas Act, 2013.</p>
<p>12. Government proposes to amend the provisions of section 44 of the Lokpal and Lokayuktas Act? If so, the details thereof?</p>	<p>Government has introduced a Bill, namely, the <u>Lokpal and Lokayuktas and other related law (Amendment) Bill, 2014</u>, in the Lok Sabha on 18th December, 2014. The said Bill contains, inter alia, a proposal to amend section 44, in order to provide for a scheme wherein the filing of information by public servants under the provisions of the section are proposed to be brought in harmony with the provisions of the respective Acts, Rules or Regulations, as applicable to different categories of public servants. It is also proposed to amend sub-section (6) of section 44 in order to enable the Central Government to prescribe the manner in which information furnished by public servants of different categories is to be published, keeping public interest in view, by the respective competent authorities. The said Bill now stands referred to the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, for consideration and report.</p>
<p>13. In case, the spouse is also a public servants, whether both, the husband and wife have to file the returns indicating the assets and liabilities of the other spouse, under the Lokpal and Lokayuktas Act, 2013.</p>	<p>Yes. Sub-section (1) of Section 44 of the Lokpal and Lokayuktas Act, 2013 makes it mandatory for every public servant to make a declaration of his assets and liabilities in the manner as provided by or under this Act, i.e. as per provisions of section 44(2) of the Act. <u>The requirement is binding on each public servant, irrespective of whether the spouse of the public servant is also a public servant or not.</u></p>
<p>14. In case, the spouse of a public servant, has assets procured by his/her own income, or has his/her own property, whether, in such a case also, the public servant has to indicate the assets and liabilities of the spouse in the returns under the Lokpal and Lokayuktas Act, 2013.</p>	<p>Yes. Clauses (a) and (b) of Sub – section (2) of Section 44 of the Lokpal and Lokayuktas Act, 2013 does not make any exception in respect of assets procured by the spouse of the public servant by his/her own income.</p>
<p>15. Whether the assets and liabilities of spouse of a public servant, who is an employee of a private company/ organisation, are to be reflected in the return of the assets and liabilities to be filed by the public servant, under the provisions of the Lokpal and Lokayuktas Act, 2013.</p>	<p>Yes. Clauses (a) and (b) of Sub – section (2) of Section 44 of the Lokpal and Lokayuktas Act, 2013 does not make any exception for not not furnishing the declaration, in respect of assets procured by the spouse of the public servant by his/her own income.</p>

<p>16. Whether a public servant, who has a share in an <u>undivided</u> property of Hindu Undivided Family, is required to furnish such information and in what manner?</p>	<p>Yes. Please see the Note 2 of APPENDIX-1 of the Public Servants (Furnishing of Information and annual return containing declaration of assets and liabilities by public servants and Limits for Exemption of Assets in filing Returns) Rules, 2014 [Notification No. G.S.R. 501(E) dated 14-07-2014]. It states that “if a public servant is a member of Hindu Undivided Family with co-parcenary rights in the properties of the family either as a “Karta” or as a member, he should indicate in the return in Form No. III the value of his share in such property.” The same principle will also have to be followed in respect of movable property belonging to a HUF.</p>
<p>17. In what manner the value of his share in the undivided property of Hindu Undivided Family, is to be indicated by a public servant, particularly if it is not possible to indicate the exact value his share?</p>	<p>The approximate value of his share may be indicated with explanatory note wherever necessary, if it is not possible to indicate the exact value of his share.</p>
<p>18.What happens if a public servant fails to furnish information in respect of his assets</p>	<p>If a public servant willfully or for the reasons which are not justifiable, fails to declare his assets or gives misleading information in respect of such assets and is found to be possession of assets not disclosed or in respect of which misleading information was furnished, then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means. <i>[Please see section 45 of the Lokpal and Lokayuktas Act, 2013]</i></p>
<p>19. Whether the Information furnished by the public servants will be put in public domain?</p>	<p>Yes. As per provision of Section 44(6) of the Lokpal and Lokayuktas Act, 2013. “The Competent authority in respect of each Ministry or Department shall ensure that all such statements are published on web site of such Ministry or Department by 31st August of that year.”</p>

Disclaimer: The above clarifications are for general information and guidance and do not interpret legal provisions of the Act nor tender any legal opinion on issues.