NGO - Public Servants

What is the issue?

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There are several ambiguities in the Lokpal and Lokayuktas Act, 2013 (L&L Act), which in current form, strongly discourages the participation of citizens in social and humanitarian activities.

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What are the provisons of L&L Act?

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- Lokpal at the Centre and Lokayukta at the level of the states.
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- Lokpal will consist of a chairperson and a maximum of eight members, of which 50% shall be judicial members.
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- 50% of members of Lokpal shall be from SC/ST/OBCs, minorities and women.
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- The selection of chairperson and members of Lokpal shall be through a selection committee consisting of\n
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  - PM,
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  - Speaker of Lok Sabha,
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  - Leader of Opposition in the Lok Sabha,
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  - Chief Justice of India or a sitting Supreme Court judge nominated by CJI,
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  - Eminent jurist to be nominated by the President on the basis of recommendations of the first four members of the selection committee.
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- Prime Minister has been brought under the purview of the Lokpal.
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- Lokpal's jurisdiction will cover all categories of public servants.
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- All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) **in excess of Rs 10 lakh per year** are brought under the jurisdiction of Lokpal
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What was the amendment?

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- Going by this definition, public servants should furnish particulars of their assets and liabilities as well as those of their spouses and dependent children to the authorities.
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- Non-compliance is liable for action against him/her under the Prevention of Corruption Act 1988.
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- Centre moved an amendment to address concerns arising from the mandatory declaration of assets and liabilities under the Lok Pal and Lokayukta Act, 2013.
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- While the amended Act continues to hold it is compulsory for public servants to file their returns**, the form and procedure for doing so is left open with "as may be prescribed"**.
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- In doing so, it does away with sub-sections of **Section 44 of the Act**, which required public servants **to disclose the assets of their spouse and dependent children.** It also dispenses with the requirement such disclosure be made publicly available on websites, as laid down by Section 44 (6).
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- While this means that employees of NGOs will not have to file returns this year, NGO employees will still have to declare their assets if the Centre decides to lay down when and how this should be done.
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- In other words, NGOs and their employees will still remain public servants under the Lokpal Act.
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Why NGOs are opposing the move?

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- Unfortunately, the Indian NGO sector has brought it upon itself.
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- Instead of challenging the categorisation of NGO workers as ‘public servants’, they chose to raise the issue of asset declaration of spouses and children.
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- **Government employees** - The government has used this opening to set the clock back on transparency i.e under the amended law, no distinction is made between Central government employees and those of NGOs.
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- As a result, Central government employees will also no longer need to file returns on assets and liabilities for now.
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- **Privacy** - The unease among NGOs led some members to resign from their posts. Partly, this arose from a sense that their **privacy was being violated** by the demand that their assets had to be made public.
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- In many cases, trustees and members of the governing body have nothing to do with the day-to-day operations of a non-profit. They are professionals chosen for their expertise in certain areas. Therefore it is not right to label them as public servants.
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- **Against Principle** - NGOs are essentially private organisations working for public good.
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- **Discourage volunteers** - The other concern was that a great proportion of social work is carried out by volunteers. NGOs fear this could discourage people from getting involved in social causes.
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- Finally, the Opposition stemmed from a suspicion that the notifications had less to do with tackling corruption than harassing civil society organisations that question the government’s decisions.
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- **Impracticality** - India has around 6 million NGOs. Even if we assume that only 50 percent, or 3 million, are government-funded, and if we take an average of four board members and 4 staffers per NGO, that leaves us with 24 million public servants for Lokpal to monitor. Its impractical for Lokpal to

manage it.
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- Financial irregularities by institutions and individuals are covered through several other pieces of legislation such as the IPC, the Prevention of Corruption Act, the Foreign Currency Regulation Act, the Companies Act, ITax Act and so on
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Why the move is desirable?

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- But not everyone agrees that employees of NGOs that receive government funding should be treated differently from government employees.
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- An NGO gets tax breaks under Section 12-A of the IT Act, when it gets registered. When it gets funding from the Government, it is public money. Therefore, it stands to reason that the assets of all involved should be disclosed and that includes those of spouses and dependents.
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- There is also no significant evidence of privacy being violated in the case of disclosures.
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Source: The Hindu, Hindustan Times

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