

Bill No. 94 of 2022

THE GOVERNMENT LEGISLATIVE PROPOSALS AND SCHEMES
(IMPACT ANALYSIS AND POST IMPLEMENTATION
ASSESSMENT) BILL, 2022

By

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BILL

*to bring about accountability and Parliamentary oversight to the legislative
and policy-making process in the country and to improve the quality of
expenditure made by the Union Government.*

BE it enacted by Parliament in the Seventy-third Year of the Republic of India
as follows:—

CHAPTER I

PRELIMINARY

5 1.(1) This Act may be called the Government Legislative Proposals and
Schemes (Impact Analysis and Post Implementation Assessment) Act, 2022.

Short title and
commencement.

(2) It shall come into force on such date as the Central Government may, by
notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) “Bill” means a Government Bill but does not include Finance Bill, Appropriation Bill and Bills of trivial or technical nature;
- (b) “Government” means the Central Government;
- (c) “major Scheme” means a Scheme that is likely to result in a recurring expenditure of rupees one thousand crores or above from the Consolidated Fund of India or a cumulative expenditure of rupees one thousand crores or above within three years from the day of its implementation; 5
- (d) “major Bill” means a Bill which on enactment will—
- (i) involve an expenditure of rupees one thousand crores or above from the Consolidated Fund of India; or 10
- (ii) result in major increase in costs for consumers, individual industries, Union, State or local government, or geographic regions; or
- (iii) have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of India-based enterprises to compete with foreign-based enterprises in domestic or export markets; or 15
- (iv) regulate any item either under the Union or the Concurrent List of the Seventh Schedule to the Constitution or any item in the State List that the Union Government seeks to regulate,
- and the expression “major Act” shall be construed accordingly; 20
- (e) “market failure” means the following situations which result in markets not allocating resources efficiently:—
- (i) market power where one party in the negotiation or a contract has little power and experiences a loss of choice including monopolies and oligopolies;
- (ii) asymmetric information where the process of negotiation works poorly as one party involved lacks information relative to the other; 25
- (iii) externalities where the consequences of the action of two negotiating parties are not negotiated which may lead to an effect on a third party;
- (iv) provision of public goods where goods that are being provided are non-rivalrous in that consumption of that good or service by one person doesn’t lead to lesser availability for another; and non-excludable in that consumption of a good or service by one person doesn’t exclude another person from consuming that good or service; 30
- (f) “prescribed” means prescribed by rules made under this Act; and
- (g) “Scheme” means a Government or Government sponsored Scheme. 35

CHAPTER II

PRE-LEGISLATIVE REQUIREMENTS

Conditions to be fulfilled for Bills and Schemes.

3. For every Bill proposed to be introduced in either House of Parliament and Scheme, that is to be implemented either by Central Government or by a State Government or jointly, the Ministry of the Government responsible for initiating the Bill or formulating the Scheme shall comply with the following conditions: 40

(a) the Bill or the Scheme shall disclose the need for and consequences of the proposed Government action;

(b) the Bill or the scheme shall not be undertaken unless its potential benefits outweigh its potential costs to the society; 45

(c) objectives of the Bill or the scheme shall be clearly delineated and chosen so as to maximize the net benefits to society;

(d) among alternative approaches to any objective being sought by the Bill or the scheme, the alternative involving the least net cost to society shall be chosen; and

(e) Ministry responsible shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy and other regulatory actions contemplated for the future.

10 **4. (1)** It shall be the duty of the Ministry of the Government, responsible for initiating a Bill or formulating or implementing a major scheme, to prepare and publish a document to be called the Legislation Impact Analysis or Scheme Impact Analysis.

Impact analysis of the proposed Bill or scheme.

15 (2) Every Legislation Impact Analysis or Scheme Impact Analysis shall contain the following information—

(a) the objectives and goals of the Bill or major Scheme to be achieved along with clear measurable or quantifiable outcomes that may be monitored:

20 Provided that the requirement to list out clear measurable or quantifiable outcomes that may be monitored shall be applicable only to major Bills or to such Bills only for which it is possible to list out clear measurable or quantifiable outcomes;

(b) the potential market failure(s) to be addressed by the Bill or the scheme;

25 (c) studies that have examined the efficacy of the intervention of the Bill or the scheme to be undertaken, including international experiences in the implementation of a similar intervention;

(d) a description of the potential benefits of the Bill or the scheme, including any beneficial effects that may not be quantified in monetary terms, and the identification of those likely to receive the benefits;

30 (e) a description of the potential costs of the Bill or the scheme, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(f) a comprehensive analysis of all the stakeholders who are likely to be affected by the proposed intervention;

35 (g) a determination of the potential net benefits of the Bill or the scheme including an evaluation of effects that may not be quantified in monetary terms;

(h) a description of alternative approaches that may substantially achieve the objectives and goals as laid down in clause (a) at lower cost, together with an analysis of potential benefit and costs and a brief explanation, wherever required, of the legal reasons why such alternatives, if proposed, may not be adopted.

40 **5. (1) The Central Government shall, within sixty days from the date of commencement of this Act, by notification in the Official Gazette, constitute a National Consultative Committee.**

Constitution of National Consultative Committee.

(2) The National Consultative Committee shall consist of—

(a) the Union Minister of Finance who shall be the Chairperson, *ex-officio*;

45 (b) three members from the House of the People, to be nominated by the Speaker, Lok Sabha—members *ex-officio*;

(c) two members from the Council of the State, to be nominated by the Chairman, Rajya Sabha—members *ex-officio*;

(d) six experts, two from the field of economics, two from the field of law, one from the field of public policy and one from the field of statistics, being an expert in survey design, to be nominated by the Government in such manner, as may be prescribed—members; and 5

(e) the Chief Economic Adviser to the Government and one Officer from the Ministry of Statistics and Programme Implementation not below the rank of Joint Secretary to the Government or equivalent—*ex-officio* members.

(3) The term of the National Consultative Committee shall be three years. 10

(4) The salary and allowances payable to and other terms and conditions of services of members nominated under clause (d) of sub-section (1) shall be such, as may be prescribed.

Functions of
the National
Consultative
Committee.

6. The National Consultative Committee shall—

(a) specify the procedure and methodology, especially drawing upon international practices and emerging studies in the field of Cost-Benefit Analysis, which may serve as a guide for the preparation of the Legislation Impact Analysis or the Scheme Impact Analysis; 15

(b) within eight months of the commencement of this Act, in consultation with experts, both national and international, publish a document, detailing the procedure and methodology to serve as a guide in preparation of the Legislation Impact Analysis or the Scheme Impact Analysis; 20

(c) develop the methodology, procedure and guidelines for Post-Implementation Assessment Report referred to in section 11 and release a document detailing the same within two years of the commencement of this Act; 25

(d) from time-to-time, publish relevant documents and research papers in collaboration with higher educational institutions, highlighting the advances in the field which may serve as a guide to the ministries;

(e) provide consultation to the ministry concerned for preparation of the Legislation Impact Analysis or the Scheme Impact Analysis or Post-Implementation Assessment Report, as the case may be; and 30

(f) review such Legislation Impact Analysis or the Scheme Impact Analysis or the Post-Implementation Assessment Report, as it deems fit, and recommend appropriate changes that may need to be brought about.

Meetings of
the National
Consultative
Committee.

7. (1) The National Consultative Committee shall meet at least thrice in a year at such time and place and shall observe such rules of procedure in regard to the transaction of its business, as may be prescribed. 35

(2) The National Consultative Committee may invite such other experts as it may consider appropriate for the discharge of its functions.

Laying of the
legislation
Impact Analysis
and the Scheme
Impact Analysis.

8. (1) The Legislation Impact Analysis shall be laid before both the Houses of Parliament on the day the related Bill is proposed for introduction in the Parliament and shall be examined by the concerned Department-related Parliamentary Standing Committee to recommend such changes to the Legislation Impact Analysis, as it deems appropriate. 40

(2) The Scheme Impact Analysis shall be laid before both Houses of the Parliament in a session immediately following the date of release of the Scheme document. 45

Sunsetting
provision for
legislations
and schemes.

9. (1) Every Bill and scheme shall provide for a sunset provision declaring that the Act or the scheme shall cease to be operative after completion of the period specified in that sunset provision.

(2) where the period specified in sunset provision is more than twenty years in case of an Act, and ten years in case of a scheme, the Bill or scheme shall provide for an explanation for exceeding the aforesaid time period:

5 Provided that if any Bill or scheme is to be exempted from the sunset clause, the President shall after examining the explanation to that effect by the Government, recommend the introduction of the Bill or implementation of the scheme without sunset clause.

CHAPTER III

REVIEW COMMITTEE

10 **10. (1) The Government shall, by notification in the Official Gazette, constitute a Review Committee for every Ministry for carrying out the purposes of this Act.**

Constitution
of Review
Committees.

(2) The Review Committee shall consist of:—

(a) the Minister responsible for the legislation or scheme, Chairperson *ex-officio*;

15 (b) the Secretary of the Ministry responsible for the legislation or scheme, member *ex-officio*;

(c) a representative from the Union Finance Ministry not below the rank of Joint Secretary, member *ex-officio*;

20 (d) a representative from the Home Ministry not below the rank of Joint Secretary member *ex-officio*;

(e) the Chief Economic Advisor to the Government, member *ex-officio*; and

25 **(f) two legal experts, two environmentalists or sustainability experts, two economists or statisticians or economy experts, two domain experts and one member from the civil society, to be appointed by the Government in such manner as may be prescribed, members.**

(3) The Review Committee may invite such other experts (including international experts) as it may consider appropriate for the discharge of its functions.

30 (4) The members of the Review Committee, other than *ex-officio* members, shall have a term of three years and be eligible for re-nomination only for two consecutive terms.

CHAPTER IV

EX-POST REVIEW

35 **11. (1) The Review Committee shall undertake Post-Implementation Assessment of every major Act and major scheme.**

Post
Implementation
Assessment.

(2) The Post-Implementation Assessment shall be conducted every three years after taking into consideration:—

(i) Legislation Impact Analysis and Scheme Impact Analysis;

40 (ii) Performance Measurement to assess the results against measurable outcomes entailed in the Legislative Impact Analysis or Scheme Impact Analysis;

45 (iii) Impact Assessment Identify the ex-post impact of a major act or scheme, including the social, economic, environmental, legal and administrative impacts to evaluate the combined costs and benefits of a major act or scheme including the whole range of social, economic, environmental, legal and administrative considerations; and

(iv) Perception Surveys Involve stakeholder consultation of the perceived impact, both benefits and costs, of the major acts and schemes under review.

(3) The Review Committee shall complete the Post-Implementation Assessment Report within one hundred and twenty days from the start of the review process. 5

(4) The Post-Implementation Assessment Report shall be laid before both the Houses of the Parliament in a session immediately following the date of its completion.

CHAPTER V

MISCELLANEOUS

- Scheme Impact Analysis and Post-Implementation Assessment of the Major Schemes already in existence. 10
- 12. (1)** For major schemes already in existence on the day this Act comes into force: –
- (a) the concerned ministry shall prepare a Scheme Impact Analysis within eighteen months from the day this Act comes into force; and
- (b) the Review Committee shall conduct a Post-Implementation Assessment after a period of three years from the day this Act comes into force. 15
- Power to make rules. 10
- 13. (1)** The Government may, by notification, make rules to carry out the provisions of this Act.
- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 20 25

STATEMENT OF OBJECTS AND REASONS

In a Presidential form of Government, the Legislature has ample freedom to initiate a legislative proposal and the Executive has a very limited role in this regard. Legislature therefore, in a Presidential System exercise a corresponding amount of check on the Executive which delivers a large degree of stability to the system. The Parliamentary form, on similar grounds, seeks more accountability from the Executive which is an integral part of the Legislature. Laws are a primary means by which the Executive runs about its agenda. However, many a time Bills are passed without adequate deliberation in the Houses. The Bill, firstly, seeks to devise a legislative check on the actions of the Government irrespective of whether a party holds a majority.

Any expenditure incurred by the Government imposes a cost on the economy. Also known as marginal cost of public funds, it is an opportunity cost that could have been effectively utilized elsewhere by other agents in the economy. Empirical estimates put this figure to be around 3, implying that for every rupee spent by the Government, there is a cost of about three rupees to the economy. When multiplied by the volume of government spending in the economy, the impact is gigantic. Therefore, it is necessary to keep an accountability on such large expenditure – any spending which is not meeting its stated objectives must be discontinued. The field of cost-benefit analysis has been revolutionary in this regard. Such a system was kept in place as early as the 1980s in the USA. Similarly, the OECD countries like Australia have a robust mechanism in place to assess the impact of every legislation once in place.

The pace of change in today's world is blinding. This fast-moving world demands an evolving and agile legislation landscape that caters to the everchanging needs of our society and economy. The nation cannot have an overhang of outdated legislations that do not improve governance outcomes, but instead contribute to increasing the legal and social costs to society. In this context, we require our laws and schemes to have expiry date (sunset clause). Such provision will ensure an opportunity re-make laws and schemes that will help our nation stay up to date on evolving situations of the world.

The present Bill, *inter-alia*, provides for—

(a) a pre-legislative mechanism to clearly set out objectives of the stated government intervention, careful consideration of costs and benefits to the society from the proposed legislation or scheme, all of which must be documented in an Impact Analysis report, and the insertion of sunset clauses in every scheme and legislation;

(b) a post-implementation mechanism to check whether the government has met its stated objectives and measurable targets, and the impact the intervention has had on the society. Should the government fail to do so in the post-implementation assessment, the act or scheme shall stand repealed or revoked, respectively;

(c) establishment of a National Consultative Committee which will guide the government in the technical details pertaining to the studies to be conducted for every legislation and scheme and the establishment of a Review Committee under every ministry to carry out the post-implementation assessment of the legislation and scheme.

The Bill seeks to achieve the above objectives.

NEW DELHI;
23 February, 2022

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FINANCIAL MEMORANDUM

Clause 5 of the Bill provides for constitution of a National Consultative Committee to assist the Government in the pre-legislative process of any legislation or scheme and in preparation of a guide for the Post-Implementation Assessment Report. It also provides for appointment of experts to the Committee. Clause 10 provides for the constitution of a Review Committee under each ministry to scrutinise the working of major legislations and schemes. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees twenty-one crore per annum would be involved from Consolidated Fund of India.

A non-recurring expenditure of rupees two crore is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 13 empowers the Central Government to make rules regarding the times and places of the meetings of the National Consultative Committee and the procedure to be followed at such meetings under sub-section (1) of section 7 and the expenditure incurred on the meetings of the National Committee under sub-section (3) of section 7.

The matters in respect of which rules may be made by the Central Government are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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to bring about accountability and Parliamentary oversight to the legislative and policy-making process in the country and to improve the quality of expenditure made by the Union Government.

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