AS INTRODUCED IN THE RAJYA SABHA
ON 1ST APRIL, 2022

Bill No. XIX of 2022

THE LEGISLATION AND EXPENDITURE ACCOUNTABILITY BILL, 2022

A

BILL

to bring about further 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 and for matters connected therewith or incidental thereto.

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

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Legislation and Expenditure Accountability Act, 2022.

(*2*) It extends to the whole of India.

(*3*) 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*) "Act" means any legislation that has been effected as law;

(*b*) "Committee" means the National Consultative Committee constituted under section 5 of this Act;

(*c*) "government" refers to the government of India;

(*d*) "legislation" means any of the followinng Bills introduced by a Minister in the Government in either House of Parliament, which seeks to be converted into an Act and effected as law:—

(*i*) ordinary Bill, i.e., any other Bill except the ones defined in Sub clauses (ii) to (v) below;

(*ii*) Money Bill as defined under Article 110 of the Constitution of India;

(*iii*) any Bill which involves expenditure from the Consolidated Fund of India;

(*iv*) ordinance-replacing Bill, *i.e.,* a Bill brought before the Parliament to replace an ordinance, with or without modifications, promulgated by the President under article 123 of the Constitution;

(*v*) Constitution amendment Bill, *i.e.* any Bill that seeks to amend the Constitution of India.

(*e*) "Legislation Impact Analysis" means the document published by a Ministry as per section 4 of this Act;

(*f*) "major Act" means any major legislation that has been effected as law;

(*g*) "market failure" means any of the following situations which may result in markets not allocating resources efficiently:—

(*i*) market power where one party in the negotiation or a contract has little power and therefore, experiences a loss of choice, which may include monopolies and oligopolies; or

(*ii*) asymmetric information where the process of negotiation works poorly as one party involved lacks information relative to the other; or

(*iii*) externalities where the consequences of the action of two negotiating parties are not negotiated, and thus, may lead to an effect on a third party; or

(*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 does not lead to lesser availability for another; and non-excludable in that consumption of a good or service by one person does not exclude another person from consuming that good or service.

(*h*) "major legislation" means any legislation that is likely to result in:—

(*i*) an expenditure of rupees one thousand crores or above from the consolidated fund of India; or

(*ii*) an annual effect on the economy of rupees ten thousand crores or above; or

(*iii*) a major increase in costs or prices for consumers, individual industries, Union, State, or local governments, or geographic regions; or

(*iv*) 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

(*v*) significant regulation of any item either under the Union or Concurrent List of the Seventh Schedule to the Constitution or any item on the State List that the Union Government seeks to regulate;

(*i*) "major scheme" means any scheme that is likely to result in a recurring expenditure of 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 the implementation of the scheme;

(*j*) "Post-Implementation Assessment Report" means the report published by a Ministry under section 11 of this Act;

(*k*) "prescribe" means prescribed by the rules made under this Act;

(*l*) "Review Committee" means the Review Committee constituted under section 13 of this Act;

(*m*) "scheme" refers to any centrally sponsored scheme or any central sector scheme as declared by the government; and

(*n*) "Scheme Impact Analysis" means the document published by a Ministry as per section 4 of this Act.

CHAPTER II

PRE-LEGISLATIVE REQUIREMENTS

General requirements of every scheme and legislation.

3. (*1*) For every legislation that is sought to be introduced in the House of Parliament or any scheme that is implemented, the concerned Ministry of the Government shall adhere to the following requirements:—

(*a*) the scheme or legislation shall be based on adequate information concerning the need for, and consequences of proposed Government action;

(*b*) the legislation or scheme shall not be undertaken unless the potential benefits to society from the legislation or scheme outweigh the potential costs to society;

(*c*) objectives of the legislation or 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 scheme or legislation, the alternative involving the least net cost to society shall be chosen; and

(*e*) the Ministry concerned 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.

Impact analysis of the proposed legislation or scheme.

4. (*1*) In order to implement the objectives as set out in section 3 of this Act, each Ministry of the Government shall, in connection with every legislation, except those making clarifications, correcting procedural and formatting errors, or every major scheme, prepare and publish a document called the Legislation Impact Analysis or Scheme Impact Analysis, respectively, at the time of their introduction.

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

(*a*) the objectives and goals of the legislation or scheme which are sought to be achieved along with clear measurable or quantifiable outcomes that may be monitored:

Provided that the requirement to list out clear measurable or quantifiable outcomes that may be monitored shall, among legislations, be applicable only to a major legislation or for which it is possible to list out clear measurable or quantifiable outcomes;

(*b*) the potential market failure(s) that are being sought to be addressed by the legislation or scheme;

(*c*) studies that have examined the efficacy of the intervention that is sought to be undertaken, by the scheme or legislation, including international experiences in the implementation of a similar intervention;

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

(*e*) a description of the potential costs of the legislation or 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;

(*g*) a determination of the potential net benefits of the legislation or scheme, including an evaluation of effects that cannot be quantified in monetary terms;

(*h*) a description of alternative approaches that may substantially achieve the goals as laid out in clause (*a*) of this section at lower cost, together with an analysis of their potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, may not be adopted; and

(*i*) unless covered by the description required under clause (*h*) of this section, an explanation of any legal reasons why the legislation or scheme cannot be based on the requirement set forth in section 3 of this Act.

Constitution of National Consultative Committee.

5. (*1*) For the purpose of assisting the Government in the requirement as laid out in section 4 of the Act, there shall be constituted a National Consultative Committee comprising of the following members:—

(*a*) the Union Minister of Finance as the Chairperson *ex-officio;*

(*b*) two members nominated from amongst the Member of Council of States *i.e.,* the or Rajya Sabha;

(*c*) three members nominated from amongst the Members of the House of the People *i.e.* Lok Sabha;

(*d*) six members being experts wherein two members shall be 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, who is also an expert in survey design; and

(*e*) two *ex-officio* representatives, including the Chief Economic adviser, from the Ministry of Finance or NITI Aayog, and one from the Ministry of Statistics and Programme Implementation not below the rank of Joint Secretary to the Government or equivalent.

(*2*) the Commitee shall be constituted within a period of sixty days from the date of commencement of this Act, and shall be reconstituted for every three years thereafter.

(*3*) The salary and allowance payable to, and the terms and conditions of service of the Members of the Committee, shall be such as may be prescribed.

Functions of the National Consultative Committee.

6. (*1*) The functions of the Committee shall be as follows:—

(*a*) to formulate the procedure and methodology which would serve as a guide for the preparation of the Legislative Impact Analysis or Scheme Impact Analysis, drawing upon international practices and emerging studies in the field of cost- benefit analysis;

(*b*) to publish in consultation with relevant experts, both national and international, a document, within eight months of the commencement of this Act, detailing the procedure and methodolodgy to serve as a guide in preparation of the Legislative Impact Analysis or Scheme Impact Analysis, which shall be updated, on an annual basis;

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

(*d*) to provide consultation to the relevant Ministry of the Government for the preparation of the Legislation Impact Analysis or Scheme Impact Analysis or Post-Implementation Assessement Report;

(*e*) to review any Legislation Impact Analysis or Scheme Impact Analysis or Post-Implementation Assessment Report, as it deems fit, and recommend appropriate changes therein; and

(*f*) the Committee may also from time-to time publish relevant documents and research articles, in collaboration with higher educational institutions, highlighting the advances in the field which may serve as a guide to the Ministries of the Government.

Meetings of the National Consultative Committee.

7. (*1*) The Committee shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in the manner as may be prescribed by the Government.

Provided that the Committee shall meet at least thrice in a year.

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

(*3*) The expenditure incurred by the Committee shall be regulated in such manner as may be prescribed by the Central Government.

Laying of the Legislation Impact Analysis and the Scheme Impact Analysis in the Parliament.

8. (*1*) The legislation Impact Analysis shall be laid in both Houses of parliament along with every legislation.

(*2*) If a legislation is referred to a Department-related Parliamentary Standing Committee or any Ad-hoc Committee of the Parliament for the purpose of examination and report, the Legislation Impact Analysis shall also be scrutinised by such committee which Committee may recommend changes to the Legislation Impact Analysis, as it deems fit.

(*3*) The Scheme Impact Analysis shall be laid in both the Houses of the Parliament in the Immediate subsequent session of the Houses from the date of the release of the scheme document.

(*4*) It shall be the duty of the Ministry of the Government to ensure that the Legislation Impact Analysis and Scheme Impact Analysis is made public on the day the legislation is introduced or the scheme document is released, in such manner as may be prescribed.

Termination clause for legislations and schemes.

9. (*1*) Every legislation introduced in the Parliament or schcme launched by the Government shall include a termination clause.

Explanation:— The termination clause shall render the proposed legislation or scheme null and void after the passage of a prescribed period specified therein unless the legislation or scheme is re-made.

(*2*) If the termination period is greater then twenty years for legislations and ten years for schemes, the legislation or scheme shall include an explanation with satisfactory reasons for exceeing the prescribed termination limit.

(*3*) Prior approval of the President shall be obtained by the Government for exemption from the termination clause for a legislation or a scheme with a suitable explanation by the concerned Ministry of the Government.

(*4*) The termination clause shall apply to all legislations, including amendments except those making clarifications, correcting procedural and formatting errors.

CHAPTER III

EX-POST REVIEW

Post-implementation assessment.

10. (*1*) For every major legislation and major scheme, post-implementation assessment will be undertaken by a Review Committee, constituted under Section 13 of this Act.

(*2*) The post-implementation assessment for major legislation and schemes shall be conducted against the backdrop of Legislative Impact Analysis and Scheme Impact Analysis laid in the Parliament, respectively, every three years after the said major legislation and scheme is implemented.

Detailing post-implementation assessment.

11. (*1*) For the purpose of this Act, the concerned Ministry of the Government shall publish a Post-Implementation Assessment Report which shall, *inter-alia,* comprise of three components:—

(*a*) performance measurement to assess the results against measurable outcomes entailed in the Legislative Impact Analysis or Scheme Impact Analysis.

(*b*) impact assessment to identify the ex-post impact of a major legislation or scheme, including the social, economic, environmental, legal and administrative impacts and to evaluate the combined costs and benefits of a major legislation or scheme.

Explanation:— Combined costs and benefits shall include the whole range of social, economic, environmental, legal and administrative considerations.

(*c*) perception surveys which involve stakeholder consultation of the perceived impact, both benefits and costs, of the major legislation or scheme under review.

(*2*) On taking up a legislation or scheme for ex-post review, the Review Committee shall complete the Post-Implementation Assessment Report and submit it to the concerned Ministry of the Government within one hundred and twenty days from the start of the review process.

(*3*) The Post-Implementation Assessment Report shall be laid before both the Houses of the Parliament in the immediate subsequent session of the Houses from the date of the release of the Post-Implementation Assessment Report.

(*4*) It shall be the duty of the concerned Ministry of the Government to ensure that the Post- Implementation Assessment Report is made public on the day it is laid in the Parliament, in such manner as may be prescribed.

Repeal and revocation of Act or scheme.

12. (*1*) In case any major legislation or scheme fails to achieve the objectives stated in the Legislation Impact Analysis or Scheme Impact Analysis, or when the combined costs outweigh the combined benefits for three consecutive Post-Implementation Assesments, the said major legislation or scheme shall stand repealed or revoked, respectively.

CHAPTER IV

REVIEW COMMITTEE

Composition of the Review Committee.

13. (*1*) The Government shall constitute a Review Committee consisting of fifteen members, including a Chairperson, five *ex-officio* members and nine Members nominated by the Government:—

(*a*) the Minister of the Government responsible for the legislation or scheme shall be the Chairperson of the Review Committee;

(*b*) the five *ex-officio* members shall include:—

(*i*) the Secretary of the Ministry of the Government responsible for the legislation or scheme;

(*ii*) a representative from the Union Ministry of Finance not below the rank of Joint Secretary;

(*iii*) a representative from the Union Ministry of Home Affairs not below the rank of Joint Secretary;

(*iv*) the Chief Economic Advisor to the Government;

(*v*) one other Secretary to the Government.

Provided that if the Union Ministry of Finance or of Home Affairs is not in-charge of the legislation or scheme, in which case two other Secretaries from relevant ministries shall be *ex-officio* members; and

(*c*) 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-Members.

(*2*) The Members referred to in clause (*c*) of sub-section (*1*) shall have a term of three years and such members shall be eligible for only two consecutive terms, not extending beyond total of six years in case of re-nomination.

(*3*) There shall be one Review Committee for each Ministry of Government, which shall be responsible for reviewing every legislation or scheme pertaining to that Ministry as specified under sub-section (*1*) of section 10 of this Act.

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

CHAPTER V

MISCELLANEOUS

Retrospective application of the Act.

14. (*1*) For major schemes already in existence before the commencement of this Act:—

(*a*) The concerned Ministry of the Government shall prepare a Scheme Impact Analysis within eighteen months from the day of commencement of this Act.

(*b*) The Review Committee shall conduct a Post-Implementation Assessment after a period of three years from the date of commencement of this Act.

Government to provide funds.

15. The Government shall provide after due appropriation made by Parliament by a law in this behalf, necessary funds, from time to time, for carrying out the purpose of this Act.

Power to make rules.

16. (*1*) The government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the foregoing power, such rules may provide for the details pertaining to time and place of the meetings of the 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 Committee under sub-section (*3*) of section 7.

(*3*) 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.

STATEMENT OF OBJECTS AND REASONS

1. In a Presidential form of government, the Legislature has ample freedom and agency to go about bringing in legislations in the country. This power has 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 its agenda. However, there is a high chance that the Legislature faces handicap without adequate deliberation and accountability on laws when a certain government has majority numbers in both the Houses of Parliament. The Bill, firstly, seeks to devise a legislative check on the actions of the government irrespective of whether a party holds a majority, or not in both Houses of Parliament.

2. 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 and 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 in 1980s in the United States of America. Similarly, the member of Organisation for Economic Co-operation and Development countries like Australia has a robust mechanism in place to assess the impact of every legislation.

3. 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 the society. In this context, we require our laws and schems to have expiry date or a sunset clause. Such provision will ensure an opportunity to remake laws and schemes that will help our nation stay up to date on evolving situations of the world.

4. Therefore, the Legislation and Expenditure Accountability Bill, *inter-alia,* provides for—

(*a*) a pre-legislative mechanism to clearly set out objective 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*) 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;

(*c*) 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 and in the event the government fails to do so in the post-implementation asssessment, the Act or Scheme shall stand repealed or revoked, respectively; and

(*d*) the establishment of a Review Committee under every Ministry to carry out the post-implementation assessment of the legislation and scheme.

5. The Bill seeks to achieve these objects.

SUJEET KUMAR

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. Clause 6 of the Bill provides for the freedom of the Committee which *inter-alia* provides for preparation of a guide for the Post-Implementation Assessment Report. Clause 7 of the Bill provides for meetings of the Committee and expenditure thereof. In respect of these clauses of the Bill, an indicative recurring expenditure of about rupees one crore per annum is anticipated for expenses of the National Consultative Committee Clause 13 provides for the constitution of a Review Committee under each ministry to scrutinise the working of major legislations and schemes. The indicative recurring expenditure for meeting the expenses of Review Committees is estimated to be rupees twenty crore per annum. Clause 15 provides that the Government shall provide funds for the purpose of the Act.

The Bill, if enacted, will involve expenditure from the consolidated fund of India as indicated above as recurring expenditure per annum. The provisions of the Bill will not involve any other expenditure of recurring or non-recurring nature.

MEMORANDUM OF DELEGATED LEGISLATION

Clause 16 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill.

2. 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 further 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 and for matter connected therewith or incidental thereto.

(*Shri Sujeet Kumar, M.P.*)

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