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Chirravuri Research Foundation
for Human and Global Reforms
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**THE GOVERNMENT LEGISLATIONS AND SCHEMES
(IMPACT ANALYSIS AND POST IMPLEMENTATION
ASSESSMENT) BILL**

Draft Legislation

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ARRANGEMENT OF CHAPTERS

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THE GOVERNMENT LEGISLATIONS AND SCHEMES (IMPACT ANALYSIS AND POST IMPLEMENTATION ASSESSMENT) BILL

A

BILL

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

BE it enacted by the Indian Parliament as follows,

CHAPTER – I PRELIMINARY

1. (1) This Act may be called the The Government Legislations and Schemes (Impact Analysis and Post Implementation Assessment) Act.

Short title and commencement.

- (2) It shall come into force on such date as the Union 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 Union Government;

(c) “major Scheme” means a Scheme that is currently incurring or is likely to incur a recurring expenditure of rupees one thousand crores or above from the Consolidated Fund of State or a cumulative expenditure of rupees one thousand crores or above within two years from the day of its implementation.

(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
- (ii) result in major increase in costs for consumers, individual industries, national, 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
- (iv) regulate any item either under the Union List, State List or the Concurrent List of the Seventh Schedule to the Constitution that the Union Government seeks to regulate, and the expression “major Act” shall be construed accordingly.

(e) “major Act” means an Act which was enacted before the notification of this Act, which is currently active and has—

- (i) incurred an expenditure of rupees one thousand crores or above annually from the Consolidated Fund of India anytime during the past *twenty years*; or
- (ii) has resulted in major increase in costs for consumers, individual industries, national, state or local government, or geographic regions; or
- (iii) has adversely affected on the competition, employment, investment, productivity, innovation or on the ability of Indian enterprises to compete with foreign-based enterprises in domestic or export markets.

- (f) “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.
 - (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.
- (g) “prescribed” means prescribed by rules made under this Act; and
- (h) “Scheme” means a Government or Government-sponsored Scheme.

CHAPTER – II

PRE-LEGISLATIVE & SCHEME FORMULATION REQUIREMENTS

Conditions to be fulfilled for Bills and Schemes.

3. For every major Bill proposed to be introduced in either House of Parliament and, for every major Scheme, that is to be implemented by the Union Government, the Ministry of the Government responsible for initiating the major Bill or formulating the major Scheme shall comply with the following conditions:
- (a) the major Bill or the major Scheme shall disclose the need for and consequences of the proposed Government action.
 - (b) the major Bill or the major Scheme shall not be undertaken unless its potential benefits outweigh its potential costs to the society.

- (c) the objectives of the major Bill or the major scheme, as the case maybe, shall be clearly defined, delineated and chosen so as to maximize the net benefits to society.
- (d) among alternative approaches to any objective being sought by the major Bill or the major Scheme, the alternative involving the least net cost to society shall be chosen; and
- (e) the Ministry responsible shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition(s) of the particular industries affected by regulations, the condition(s) of the state and national economy and other regulatory actions contemplated for the future.

Impact analysis of the proposed Bill or scheme.

4. (1) It shall be the duty of the Ministry of the Government, responsible for initiating a major 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 as the case maybe.

Release of Legislation Impact Analysis & Scheme Impact Analysis documents.

- (2) The Legislation Impact Analysis document shall be prepared and tabled along-with the major Bill on the floor of Indian Parliament and shall also be published on the Parliamentary website.
- (3) The Scheme Impact Analysis document shall be prepared, released and published along-with the official notification or Government Order (G.O.,) to that effect.

Contents of legislative impact analysis or scheme impact analysis document.

- (4) Every Legislation Impact Analysis or Scheme Impact Analysis document shall contain the following information,
- (a) the objectives and goals of the major Bill or major Scheme 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 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 major Bill or the major Scheme.
 - (c) Legitimate studies conducted by academia and, or intelligentsia that have examined the efficacy of the intervention(s) of the major Bill or the major Scheme to be

undertaken, including intra-state, inter-state, national and international experiences in the implementation of a similar intervention(s).

- (d) a description of the potential benefits of the major Bill or the major Scheme, including any beneficial effects that may not be quantified in monetary terms, and the identification of those likely to receive the benefits.
- (e) a description of the potential costs of the major Bill or the major 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 major Bill or the major 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.

Constitution of
National
Consultative
Committee.

5. (1) The Union Government shall, within *sixty days* from the date of commencement of this Act, by notification in the Official Gazette, constitute a National Consultative Committee.
- (2) The National Consultative Committee shall consist of,
 - (a) The Union Minister of Finance who shall be the ex-officio Chairperson.
 - (b) four members from Lok Sabha – one each from parties of treasury and opposition benches to be nominated by the Speaker, Lok Sabha (or) House of the People as ex-officio members.
 - (c) four members from Rajya Sabha – one each representing top three numerically strong political parties in Rajya Sabha and another candidate who is deemed qualified to be a member of the committee by the Chairperson, Rajya Sabha (or) Council of States as ex-officio members.



(d) Seven experts, two each from the fields of economics, public policy and statistics and one from law with proven meritorious professional experience, to be nominated by the Government in such manner as may be prescribed; and

(e) the Chief Economic Adviser to the Government and any one officer of Ministry of Finance not below the rank of Joint Secretary or equivalent as ex-officio members.

Term, Salaries, allowances and service conditions of members.

6. (1) The term of the National Consultative Committee shall be three years.

(2) The experts mentioned under clause (d) of sub-section (2) of section 5 above shall be paid a sum ₹ 18 Lakh Indian National Rupees per annum exclusive of taxes and shall be onboarded as '*full-time consultants*'. In addition to this, the experts shall receive house rent allowance, special allowances, conveyance and medical insurance coverage as prescribed by the Government through its service rules.

(3) The experts mentioned under clause (e) of sub-section (2) of section 11 of this Act shall be paid a sum of ₹ 12 Lakh Indian National Rupees per annum exclusive of taxes and shall be onboarded as '*full-time review consultants*'. In addition to this, these experts shall receive house rent allowance, special allowances, conveyance and medical insurance coverage as prescribed by the Government through its service rules.

(4) None of the ex-officio members under this Act shall be eligible for any salary or allowances or perks throughout their tenure on the board.

(5) Nothing in sub-section (4) above prevents the ex-officio members from receiving conveyance charges, honorariums not exceeding ₹ 1 lakh Indian National Rupees per annum and, or, any other perks, emoluments or reimbursements as prescribed by the Parliament through government service rules.

(6) In the event of a vacancy related to ex-officio members which occurred (or) is scheduled to occur either due to the expiry of the primary office term of ex-officio members (or) in the event of resignation of such ex-officio members in relation to their tenure at the National Consultative Committee, then, the corresponding positions are to be refilled within 30 days from the date of such a vacancy.

(7) Bar on courts from accepting petitions related to the appointments made and all other administrative, non-

administrative and service affairs and terms related to the functioning and powers of the committee.

Functions of the National Consultative Committee.

7. 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;
 - (b) within *six months* of the commencement of this Act, in consultation with experts across state, national and international expertise, 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;
 - (c) develop the methodology, procedure and guidelines for post-implementation Assessment Report referred to in section 12 and release a document detailing the same within *twelve months* of the commencement of this Act;
 - (d) from time-to-time, publish relevant documents and research papers in collaboration with higher educational institutions particularly one prominent Central Public University and any other Institutions of National Importance (INIs) 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
 - (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 to the concerned authority that may need be needed.

Meetings of the National Consultative Committee.

8. (1) The National Consultative Committee shall meet at least once every month at such time and place and shall observe such rules of procedure regarding the transaction of its business, as may be prescribed.
- (2) The committee may invite such other experts as it may consider appropriate for the discharge of its functions.

Laying before
the Houses of
Parliament.

9. (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 either House of Parliament and shall be examined by the concerned Legislative Committee to recommend such changes to the Legislation Impact Analysis, as it deems appropriate.

(2) The Scheme Impact Analysis shall be laid before both the Houses of Parliament in a session immediately following the date of release of the Scheme document as mentioned in sub-section (3) of section 4.

Sunset
provisions for
legislations
and schemes.

10. (1) Every Bill and Scheme regardless of whether it is a major Bill, or, major 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 accordance with the corresponding sunset provision.

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

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.

(3) Nothing in this section related to sunset provisions shall be made applicable to this Act by any branch of the government.

CHAPTER – III REVIEW COMMITTEE

Constitution of
Review
Committees.

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

(2) The Review Committee shall consist of:

Composition of
Review
Committees.

- (a) The Minister responsible for the legislation or scheme, Chairperson ex-officio;
- (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;
- (d) A representative from the Home Ministry not below the rank of Joint Secretary, member ex-officio;
- (e) Seven experts, one expert each related to the fields of law, environment and sustainable development, economics and statistics; two experts with technical and administrative knowledge and expertise specific to the functional areas of the corresponding ministry; One member from the civil society or NGOs with a proven history of social service and recognition of their social welfare and impact programmes and/or activities, to be appointed as members by the Government in such manner as may be prescribed.
- (3) The Review Committee may invite such other experts (including international experts) as it may consider appropriate for the discharge of its functions.
- (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

Post
Implementation
Assessment.

12. (1) The Review Committee(s) shall undertake Post-Implementation Assessment of every major Act and major scheme that has been active before (or) since 1947 to as on date.

Formula to be
used for
calculating
monetary limits
of older
legislations
and schemes.

(2) For the purpose of choice of defining major Acts and major Schemes prior to the year 2005 and for every decade before, the definitions of “major Act” and “major Scheme” as provided in clauses (c) and (e) of section 2 along-with the monetary limits thereby, shall be adjusted to the corresponding past value of that time based on the following formula,

$$PV = FV / [(1+i)^{\{n\}}], \text{ where}$$

(PV) is the present value,
(FV) is the future value,
(i) is the inflation rate, and
(n) is the number of years.

Conditions for
Post
Implementation
Assessment.

(3) From the notification of this Act, the Review Committee(s) shall undertake Post-Implementation Assessment of major Act(s) and major Scheme(s) every *two years*, after taking into consideration:

- (i) the corresponding Legislation Impact Analysis and Scheme Impact Analysis reports as applicable.
- (ii) The performance measurement reports to assess the results against measurable outcomes entailed in the Legislative Impact Analysis or Scheme Impact Analysis as applicable.
- (iii) Impact Assessment Identify the ex-post impact of a major Act or major Scheme, including the social, economic, environmental, legal and administrative impacts to evaluate the combined costs and benefits of a major Act or major 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 major Schemes under review.

Timeline for
completion.

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

(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.

Timeline for
action on
review
committee
reports.

(5) The Government shall take corrective measures through such policies, practices and actions based on the recommendations of the review committees within *three months* from the release of the corresponding review committee's report.

(6) The Ministers shall notify the Parliament and the corresponding standing committees about the action-taken on their corresponding review committee's reports.

CHAPTER – V MISCELLANEOUS

Power to make
rules.

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 maybe; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

14. (1) The National Consultative Committee shall have its own two separate dedicated web portal for public access, scrutiny and perusal.

Dedicated
websites for
National
Consultative
Committee and
Review
Committee(s).

(2) All the Review Committee(s) together shall have one common dedicated web portal for public access, scrutiny and perusal.

(3) All reports, documents and, or publications prepared and released by the National Consultative Committee and, or the corresponding Review Committee(s) shall be published on two web portals created under clauses (1) and (2) above.

(4) The web portals mentioned under clauses (1) and (2) above shall be made accessible to general public with-in 3 months from the date of the issue of the gazette notification of this Act.

(5) All reports, papers, documents related to Legislative Impact Analysis & Scheme Impact Assessment shall be uploaded and hosted on the corresponding websites mentioned above with-in 24 hours of their initial release.

15. (1) The Government has the power to repeal any existing legislation, or, discontinue, halt, terminate or end any scheme based on the impact assessments, reviews and analysis conducted under the provisions of this bill.

Power of the
Government to
repeal existing
legislations and
terminate
schemes.

(2) The Government shall release a detailed press note *within twelve hours* justifying their decision under clause (1) above.

16. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general (or) special order, published in the Official Gazette, make such provisions

Power to
remove
difficulties.



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consistent with the provisions of this Act, as appear to them to be necessary (or) expedient for the removal of the difficulty.

(2) Every notification or order made under sub-section (1) above shall, as soon as possible, after it is issued, be laid before the Parliament.

Applicability of
the General
Clauses Act,
1897.

17. For the purposes of this Act, the General Clauses Act, 1897 shall apply.

STATEMENT OF OBJECTS AND REASONS

In a Presidential form of Government, Legislature has greater liberties with regard to initiation of new legislative proposals (or) review of existing legislations while the Executive has a very limited role in this regard. In such forms of government, Legislature exercises a fair degree of check on the Executive delivering a large degree of stability to the system. Likewise, in the Parliamentary form of Government, there should be a legal, institutional, procedural and systemic mandate for Legislature to seek 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. This Bill seeks to devise a legislative check on the actions of the Executive irrespective of nature and type of political regimes.

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 ever-changing needs of our society and economy. Our nation cannot be burdened by outdated legislations and policies that do not improve the governance outcomes rooted in inclusive human development and collective social well-being, 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 to review, re-assess and, if necessary, re-invent the 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.

FINANCIAL MEMORANDUM

Section 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.

Section 11 provides for the constitution of a Review Committee under each ministry to scrutinize 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 ₹ ten crore Indian National Rupees per annum would be involved from Consolidated Fund of India.

A non-recurring expenditure of ₹ four crore Indian National Rupees is likely to be involved.

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